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THE INTERNATIONAL COMMUNITY AND THE RIGHT OF WAR

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THE INTERNATIONAL COMMUNITY AND THE RIGHT OF WAR

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By LUIGI STURZO

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With a Foreword by
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FOREWORD

THE author of this book has won distinction in several fields. Born in Sicily in 1871, Don Luigi Sturzo studied for the priesthood at Caltagirone, taking his doctorate in Divinity at the Gregorian University in Rome, and devoting special attention to ecclesiastical and civil law, history and philosophy.

At an early age he was appointed Professor of Political Economy, Philosophy, and Sociology in the Great Seminary of Caltagirone; but his activities in the beautiful island of his birth extended far beyond the academic sphere. He organised the first co-operative societies and trade unions for peasants, workers, and artisans. He was chosen Mayor of Caltagirone in 1905 and held the office for fifteen years, in which the town became a centre of artistic and educational life. He extended the school system, founded a technical institute of accountancy, a school of ceramics, a museum and picture-gallery, and developed the municipal orchestra: for he is himself a composer and an authority on the history of music. He was also Provincial Councillor for Catania, and for twenty years Councillor and Vice-President of the Association of Italian Communes. During the war this useful citizen served on various Government Commissions, founded an association in aid of war orphans, the Emigration of Labour Association, and the Federation of Private Schools to fight the State monopoly of education.

In 1919, the first year of peace, Don Sturzo became a national and international figure by creating the Partito Popolare. Its motto was "Libertas", and its programme may be broadly described as Christian democracy. The new party rapidly won favour, and at the election of 1919 ninety-nine members were returned. Its founder, who never attempted to enter Parliament, directed its policy in the capacity of political secretary. As Chairman of the Foreign Policy Committee of his party, he established contacts with statesmen and politicians of almost every country. No narrative of the difficult years which

followed the war can ignore his influence. Though himself a priest, who earnestly strove to base political action on Christian principles, his party was undenominational and independent of the Vatican. Without being Socialist the party stood for an advanced programme of social reform, while resisting the extravagances of Nationalism abroad and upholding the cause of liberty at home.

The march on Rome in 1922 ultimately destroyed the Partito Popolare, as it destroyed every party in Italy dedicated to the service of ordered liberty. Don Sturzo, like Professor Salvemini, preferred exile to submission or compromise, and has made his home in England till the Fascist tyranny passes away. His earlier works on social and political topics are little known outside his own country, but the publication of *Italy and Fascism* in 1926, with an Introduction by Professor Gilbert Murray, revealed him to English readers as a publicist of the first rank. The book, which has appeared in American, French, and German editions, presents a lucid survey of the conditions in which Fascism arose and a searching analysis of the movement itself. Though love of liberty and dislike of an omnipotent State are stamped on every page, the tone of the book is calm and philosophic. We listen to the voice not merely of an exiled leader of a great party, but also of a scholar and a thinker.

Italy and Fascism is remarkable for its wide international outlook; and the concluding chapters (especially that on the *rôle* of the Anglo-Saxon peoples in the world to-day) anticipate something of the theme of the present work. *The International Community and the Right of War* takes us into wider fields, but it exhibits similar qualities. Both books display the idealist who is nothing of a doctrinaire, the man of learning who is also a man of affairs, the literary craftsman whose materials are skilfully marshalled and whose arguments are forcibly expressed. His theme, the elimination of war, is discussed in its historical, sociological, legal, and ethical aspects. The volume requires careful reading, but its message is perfectly clear. War, like slavery, polygamy, and private vendetta, is the child

of a particular form of political and social organization. There is nothing in human nature to render any one of these scourges eternally necessary, and with the advance of civilization they become out of date.

The first of the four parts into which the volume is divided offers an illuminating sketch of the growth, nature, and tendencies of the International Community. Don Sturzo's conception of society is organic, not static. He is convinced that mankind, which has changed so much and advanced so far, will continue to change and to advance. All social reforms, like the ideas of which they are the expression, are in a state of perpetual becoming. Our ancestors could not foresee the emergence of social and political relations which are the axioms of to-day, and many of our fellow-citizens are equally unable to imagine a world differing widely from our own. Civilization as we know it has been built up round the two fundamental institutions of the family and the State, and our author looks forward with confidence to a third, the International Community, with an organization and a personality of its own. For the sovereign State is not enough, since it no longer fulfils the legitimate demand of its citizens for well-being and security. The countrymen of Milton and of Mill will rejoice at the sturdy individualism which throbs in these spirited pages. "The State is not the end of the citizens, but the citizens are the end of the State, and the fount of law is not the State but personality."

History is the record of the efforts of mankind to satisfy its growing needs and to embody its ideals in institutional forms, and every great modification in human relationships is preceded by propaganda and conversion. Signs of the coming of the International Community are all around us. Don Sturzo refers us to the British Commonwealth, the Pan-American Union, the League of Nations, the Court of International Justice, and the Kellogg Pact, as illustrations of the truth that power can be divided and diffused. The interdependence of civilized States is as clear a postulate as the interdependence of individuals, and all human needs gradually acquire juridical

form. The optional becomes customary, and custom hardens into law. The author's religious convictions reinforce the lesson of history, for he sees in the International Community an expression of the spirit of Christianity. The tragedy of the World War marks the birth of the new era. "The seeds of Internationalism sown by liberal and democratic currents were fertilized, and the efforts and ideals of super-national Christianity returned to mind. The appeals of Benedict XV and Wilson echoed the great ideals of Christian humanity. The new principle laid down as a foundation of international life, the principle of association, dates from the Covenant of the League of Nations."

Parts II and III deal with the nature and causes of war, and review the various attempts to justify its existence. The author discusses the main theories of war—the Just War, the war for Reason of State, and the Bio-Sociological War—making a careful study of their historical bearings, and in a special chapter sets forth and defends a theory of his own. In the absence of any recognized method of settling disputes otherwise than by force, the legality of war has been incontestable; but the creation of alternative machinery destroys its sole juridical and ethical excuse. Civilization is organization, and organization implies the rationalization of force. War is thus contingent, not inevitable; a usage, not a right; an aspect of a stage in the evolution of the human family which we may reasonably hope to outgrow. We have already advanced so far, the author maintains, that no civilized country to-day is compelled to fight; and when the International Community is properly organized, war will cease for the same reason that it has ceased between individuals, namely that there is no need of force to settle disputes.

The political, economic, and psychological obstacles to the elimination of war as a legal institution are discussed in Part IV, and Don Sturzo shows no disposition to minimize their dimensions. There are people in several countries who still long for the arbitrament of the sword, and the usual talk of "the next

war" is heard in the land. The map of Europe and the world is full of rough edges, some created by treaties which ended the Great War, others surviving from an earlier time. The old conception of the self-sufficient sovereign State still cumbers the earth. Large armaments remain, at once a symbol and a cause of insecurity. Conscription, which Don Sturzo detests as heartily as if he were an Englishman, still supplies cannon-fodder by automatic process. Faced with such difficulties, our author derives encouragement from the triumphs of the past. The idealist needs inexhaustible patience no less than indestructible faith. The seeds of the movement for the abolition of slavery, which were sown when Christianity entered the world, have ripened in our own era. Pioneers convert the societies of which they are members, and the more advanced communities serve as models for the rest. We may still have to wait for "the international solidarity of interdependent States", which will eliminate war as it has been eliminated within the British Empire and the United States. But the hands of the clock cannot be put back to 1914. "Whatever the oscillations of policies and of single States, politics are already caught in the international machine, and are affected by the ideal of the abolition of war. Once the peoples have entertained this ideal as something possible it can never fade from their minds and hearts." The process of conversion will be accelerated by this thoughtful and powerful book.

G. P. GOOCH

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INTRODUCTION

§ 1. The most significant event in international politics since the Great War of 1914–18 has been the formation of the League of Nations and the attempt to substitute for war a permanent system for the peaceful settlement of interstatal disputes.

We are only at the beginning of what, it may be presumed, will figure in history as a great achievement. The constitution of the League is still weak, its working hesitant; while pacts for the outlawing of war do not seem, so far, to have been very effectual. Not only do many possible causes of war persist, but also the elements underlying all war, inasmuch as war is still a juridically recognized right of States, and the modern State continues to be organized on a politico-military basis.

Public opinion concerning the League of Nations wavers between trust and distrust; while of political currents some are favourable, some hostile.

Side by side with the practical problem that faces statesmen, politicians, technical experts, and jurists, viz. how to organize international life so as to leave no loop-hole for war, there is the equally important theoretical problem set by philosophers, historians, and sociologists: can war, as a social phenomenon, be eliminated?

Some, or maybe many, allow small importance to theories, believing that theories do not influence real and practical life. Theories, they say, are like laws, to be formulated when concrete facts require, coming after facts and seeking to interpret them. But this is not quite true. Theories do serve to classify and explain facts, but it cannot be denied that they also concur in their production. There is a mutual action and reaction between fact and theory, or better, between fact and idea, for the fact is the fulfilment of the idea and the idea the classification of the fact.

Hence, while every practical way is being tried to attain a new international situation in which the possibilities of war

will be reduced to a minimum, it is also well—and to my mind essential—that there should at the same time be a closer study from the sociological and historical point of view of the hypothesis that war as a juridical institution may be eliminated from the relations between civilized peoples.

The present work is intended as a contribution to the study of the sociological and historical aspect of war and the right and law of war, and as a trial of the theory of the eliminability of war. Part I is dedicated to an analysis of the International Community, its nature, laws, development, and present organization, for war is conditioned by the international organization, inseparable in its nature from the concrete structure of the life of peoples. Not only is it not possible to make abstraction of the relationship between a type of war with its laws and a type of international community with its laws, but the connection between them is intimate and indissoluble. Moreover, the idea of the eliminability of war, to be sociologically feasible, must arise as the reflection of a given international structure. The present structure gives us certain elements in germ from which to evolve the idea of the eliminability of war.

For this reason the type of war that we propose to study in Part II, in its nature and its relation to present international organization, is chiefly that of war between civilized States in the present day. Theoretical or historical references to the past will serve to throw into clearer relief the nature and laws of the war between civilized States to-day and the wars between such States and their own minorities or colonies. Within this framework tribal wars and skirmishes or the domestic wars of groups of non-civilized peoples find no place, since, strictly speaking, they do not come into international and political relations.

But an historical and juridical study like the present would be inconclusive if it were not completed, in Part III, by an examination of the theories that have influenced and continue to influence the formation of the right and law of war. The chief

schools, moralist, political, and sociological, give us three basic theories, which, critically examined, prove incomplete, and therefore inadequate to explain and justify the right of war. Hence the exposition of a fourth theory, responding to the criteria set forth in the present work.

In the final section, Part IV, this theory is considered in its relation to the evolution of the international community, and becomes the basis of a study of the eliminability of the right of war. This is shown to depend on the elimination of the ethical, juridical, and political premises of war, so as to carry the conflicts between State and State on to a higher plane better corresponding to the nature of man and the present stage of civilization.

PART I

THE INTERNATIONAL COMMUNITY

CHAPTER I

THE FORMATION AND DEVELOPMENT OF THE INTERNATIONAL COMMUNITY

§ 2. The idea of a society of various peoples, under whatever form it be conceived, cannot differ from the relationships which in every age and in varying degrees have existed between the different human nuclei scattered over the earth. Therefore, like all ideas deduced from facts and adequated to facts, the idea of a society of peoples can have no other foundation than the historical process of events.

Every human society is nothing else than a relationship between individuals in some way grouped together, a relationship which may be close or loose, resulting in real and permanent societies or merely temporary contacts, according to whether its cause and type be permanent or temporary, organic or anarchic. We therefore use the expression, "International Community", in the widest sense, so as to comprehend every form of social relations apart from any specific organization.

The historical process of accidental or durable relations between people and people has evolved on a twofold basis—community of race and interest among independent peoples equal in position and strength, or else the subjection of diverse peoples to a common centre. The idea of human equality, the sentiment of common brotherhood, had no place in the relations between people and people in pre-Christian times, for these ideas and sentiments were absent from the internal structure of the peoples and from their ethical and religious conceptions.

The *societas gentium* of those days could have no other significance than that derived from military and economic relations of alliance, protection, or dominion, hallowed by religious ritual and defended by force. These elements suffice to show us the natural necessity of relations between people and people, the result of the universal necessity of economic

exchange and security of social life. And since the easiest or least difficult highways of commerce were the seas and rivers, it was natural that confederal or imperial centres should grow up on the banks of the rivers and on the sea-shores. The Egyptian, Assyro-Babylonian, Greek, and Roman Empires—to mention the more famous pre-Christian civilizations—were all based on practically the same economic and political elements, and all tended, by conquest or alliance, to become the centres of ever-widening zones suitable for the development of their commerce and for the interests and needs of their dominion. When the Roman Empire spread to the north and north-east of Europe and penetrated into Asia, it overreached the natural limits of its strength and frittered away its power. The same befell the empires that preceded it, for in the relations between the unifying centre and the unified periphery there was a limit set by the economic and politico-military nature of such relations and by the intrinsic requirements of the organization of power.

§ 3. The *societas gentium*, the Society of Peoples as it was conceived by the Romans, could only be Imperial. Born of dominion, it fell with dominion. There remained nevertheless the idea of a common law, the juridical principles of which were accepted by the nascent Christian society. But Christianity in its turn established new and fundamental principles which in the long run could not fail to influence society in general, and hence the relations between the peoples. Christianity, denying every other religion, broke down the barriers created by national deities and gods of city and race. It laid as religious foundation-stone the equality of man before God, for whom there is neither Jew nor Gentile, Greek nor barbarian, master nor slave. It established love of one's neighbour as a religious duty, transcending every human limit and geographical boundary. The name of Christian thus became a far greater common denominator than that of Roman. Roman citizenship was a privilege, Christianity was for all.

This conception of religious life became little by little a conception of social life. It was nevertheless natural that since these ideas and feelings were growing up in the ambit of life of the Roman Empire, which was strong and great even in its decadence, the new Christian elements should find a framework in the politico-juridical tradition of that same Empire. The idea of Romanity and of a supreme authority unifying diverse peoples was bound up as a providential event with the idea of a world, the Known World, almost wholly Christian. The initial conversion of the barbarians by their contact with the Christian and Latin world, and their admiring respect for the greatness of Imperial Rome, encouraged this idea, notwithstanding the defective policy of the Emperors and the deep divisions between the various Christian sects which had already brought their ferment among old and new peoples.

Yet the effort to hold together the parts of the Romano-Christian Empire, already split into East and West and overrun by the Nordic races, was defeated by events. A new politico-economic structure succeeded the first, for the barbarians, even when converted, sought independence and dominance. The central authority was divided and weakened; in the West its power failed and fell, while the peoples now practically abandoned to themselves tended more and more to consider the Church and the Papacy as the centre of the society of Christian peoples.

Nevertheless, the Imperial ideal, though reduced to a shadow, survived, and, amid the growing feudalism of the West, was restored by Charlemagne. The danger for Europe then came less from the barbarians of the north than from the Islamites of the south and south-east, who formed a great political and religious movement, self-sufficient and threatening. For the Romans, the society of peoples in practice was conceived as a juridical and Imperial unity, outside which were the barbarians. In the same way for the Christian Empire, split into East and West—the latter having become the Frankish-Roman Empire —the Society of Christian Peoples appeared as a religious and

imperial society, outside of which were non-Christians, and chief among them, Islam. The concept of universality was first Roman, then Christian; but the true concept of internationality was not born till later.

§ 4. The legislative achievement of Justinian was to unite the Roman heritage of juridical wisdom with all that through the Christian influx was then in process of realization in the civilized world; it was that he adjusted the old norms of the *jus gentium*. He could not, however, take into account the new elements fermenting in the West, which would liberate a force dominating the whole world and creating a new international life and international law. The rhythm of history would still be set by Rome.

The ideology of the Christian Empire sought to reconcile the Pope and the Emperor as the twofold authority set by God over the whole world, proclaiming the subordination of Emperor to Pope in religious matters and mutual co-ordination in matters of civil governance where their powers overlapped, while leaving the civil and military domain to the Emperor and the spiritual domain to the Pope. Finally, both were to be united in the quest of the common good, the *bonum commune*, end and aim of human society, perfected by the *bonum religiosum*, end and aim of Christianity.

Relations between Christian peoples were thus subject to a dual authority, while non-Christian peoples were considered subordinate to the Church, and through the Church to a certain authority on the part of the Emperor. The limits of this right of control were disputed, but its existence was affirmed as springing from the Church's right to subject the world to the Gospel of Christ and of the consequent need for an earthly unity among peoples connected by the new Christian life. These relations found typical expression in the figure of the Christian Empire.

The theory of a Christian international society was a tempting one, but one which the course of events would prove to be too

much at variance with hard facts. For even in the structure of feudal society the boundaries of political and religious power were ill defined, and the two authorities, in the persons of their stronger and more able exponents, each sought the maintenance of a *de facto* supremacy at the other's expense. Mediaeval society was not so theocratic as to exclude all autonomy on the part of the civil powers, nor so autonomous as to prevent the Church from exercising direct influence on political life. This dualism was inherent in the very structure that was evolving. In any case, a fundamental dualism of political and religious powers was the novelty introduced with Christianity and which has shown itself in every Christian civilization for close on two thousand years.

The struggles between Popes and Emperors and their followers encouraged the friction between Kings and feudatories, Princes and Communes. The fundamental causes of the wars of those days were the instability of kingdoms and principalities, the turbulence of semi-civilized peoples and races in perpetual conflict, the poverty of entire regions destitute of resources, and the absence of public control and any true State organization. The struggles between Papacy and Empire were often more the outcome of other causes than in themselves causes of war. Even the ecclesiastico-feudal constitution of the Empire sought to bring appeasement among the Western peoples by political unification and a final authority. But the Emperor in his turn had to defend himself against bold rivals, rebel feudatories, free cities, powerful Bishops, and to this end would at one moment call on Rome for assistance, at another force Rome to bow before him. And since the Papacy likewise suffered from the instability of the time, it found in the Emperor now a champion, now an enemy—worse, with the creation of anti-Popes, even the unity of Christendom was shattered. And since the method of combat was armed force, the war regime prevailed over that of peace.

This ferment of new forces gave the impulse to a new theoretical formulation of public law as between Christian

peoples—an attempt to fix in abstract theory the dynamic and ever-fleeing reality. In this new formulation memories of Roman law mingled with Canons of the Church, barbarian traditions with Christian sentiments, tendencies towards international organization with local and personal privileges and immunities. Meanwhile a new institution had come into being, typical of the time, and forming in itself a synthesis of all the elements working in the Middle Ages—the order of Chivalry. It was a mixture of the religious and the military, of individualism and fraternity, permeated with a new sentiment, a new social force, the sentiment of honour, of the value of the pledged word; while by the defence of the innocent and weak, whom society was incapable of protecting, and by the cult of idealized woman, the exercise of arms was ennobled.

Amid the barbarism of the warlike and chaotic Middle Ages, Chivalry, with all its defects and natural deviations, was a gain. It created a moral code, it formed an aristocracy in itself, it lessened the ferocity of warfare, it facilitated the growth of middle-class and artisan society, and it served as a means of contact between the various peoples.

The Crusades, begun towards the end of the XIth century under the influence of the religious ideal and the inspiration and moral guidance of the Papacy, united warrior peoples, knightly orders, nascent States, Communes, and Emperors, in a common effort against Islam. In international life they acted as yeast, stirring the sea-faring Republics to dominate the Mediterranean, encouraging trade with the East and the development of Western culture. Their influence on the type of the society of Christian peoples, bound up as it was with Papacy and Empire, was great, for during several centuries the Crusades formed the object of great military, political, and religious coalitions, against a background of the mediaeval struggles between Papacy and Empire, between great fiefs and nascent kingdoms. Thus the framework of the Europe of the Renaissance was gradually built up, while the East, losing more and more its consistency, hard-pressed by Islam, tended

to fall back on the West, which remained sole centre of Christian civilization.

§ 5. The formation of great kingdoms and of various smaller monarchies and the extension of the Venetian Republic to the mainland correspond to the political consolidation and economic development of the XIVth century. These events laid the foundations of a new mode of conceiving the State and its relations with other peoples, in as much as feudal and religious ties weakened, and the idea of political unity gained ground. Hence the struggle was chiefly directed against the authority of the Papacy in political matters. Dante's poem is its most imposing literary expression, for Boniface VIII was the last Pope of the theocratic and feudal Middle Ages, and his struggle with Philippe le Bel marks the historical boundary of the passage from one to the other of the two conflicting political conceptions. But with the decline of the mediaeval conception of the Papacy came the decline of the Emperor also. As opposed to these two eminent powers which stood for international law in a united Christendom arose the Kings, claiming to hold their power by divine right and seeking to rid themselves of the final vestiges of investiture, election, or baronial consent so as to reach an autonomy based on heredity or conquest.

The publicists of France and Spain, and later of England, ranged themselves against the Imperialist school of Italy and Germany and remained victorious. According to the nascent regalism of the century, Kings and Princes were independent, wielding absolute authority and subordinate neither to Pope nor Emperor. The Pope's authority was confined to religious matters, and even then was not absolute, since in practice he had to recognize the historical rights of the various countries. A mystical power dwelt in the Sovereign; the Pope could not dethrone him nor absolve his subjects from their oath of allegiance. The State was identified with the reigning House, to form a perfect and complete unity.

This theory did not fail to meet with lively opposition; it was attacked by many publicists, and, moreover, during the whole of the XIVth century it seemed belied by the facts. But in the centuries following its triumph came, and the moral unity of Christendom was shattered. Two factors were pre-eminent in bringing about this change in the life of Europe—humanism, which brought back the classical Greco-Roman world in art, philosophy, and law; and the Reformation and Counter-Reformation, of which the Schism of the West and the heretical movements of the XIIth and XIVth centuries had been a prelude and an anticipation. Religious and political motives acted and reacted one on the other.

The breach in the religious unity of Christendom in the West swept away the juridical and political foundations of the mediaeval power of a Pope and Emperor supreme over a society of Christian peoples. The fall of the Byzantine Empire and the triumph of the Crescent over the eastern basin of the Mediterranean demanded the maintenance of a political, religious, and military union to face the peril of an Islamic dominion over the West and to prevent the complete closing of the East to the economic needs of Europe. At the same time the discovery of new countries and new ocean roads for navigation brought Europe into touch with colonial peoples and opened a new horizon to its expansion. The aim was no longer the mere acquisition of a commercial dominance such as had been exercised by Venice, Pisa, and Genoa in the Near East, but the conquest of territory and the subjection to Europe of entire native populations. There thus arose a new international outlook.

The relations between the sovereign States of Europe, their relations as affected by their overseas expansion, their relations with the new peoples they had conquered or were about to conquer, were discussed by jurists, theologians, and politicians, in huge assemblies, in the Universities, and in print—and printing, then a new invention, had in itself effected a revolution in European life.

In all these international developments the political centre of the various peoples moved from the Papacy and the Empire to the great dynastic houses; the figure of the absolute monarch grew predominant, by the conquest of territories whole peoples were transferred as patrimony from one dynasty to another. The concerns of the dynasty were the true public concerns, and to these all other interests were linked up and subordinated. Religion itself in its political aspect was included among dynastic concerns. Were a monarchy Catholic, the tendency of public law would be to show the identity of the interests of the monarchy and those of Catholicism, or in the same way if the monarchy was Protestant, with Protestantism.

The position of the Catholic and Protestant Sovereigns, however, differed considerably in regard to public ecclesiastical law. Catholicism through the Papacy continued to be interstatal, tending to universality, even amid the disputes and conflicts between the Papacy and the various dynasties. Protestantism, lacking a single authoritative religious centre, resolved itself into a particularism of sects, and inevitably developed into State Churches. In this way the Protestant Sovereigns could lay hold on all the nerve centres of such individualistic and acephalous religious movements, becoming temporal heads of Churches, while persecuting dissident sects and reducing them to impotence. For the Catholic States, on the other hand, the religious position of the Papacy and hierarchy continued to be autonomous; nevertheless, each Sovereign sought to attenuate their power, excluding them from the political field, and in the religious field obtaining such compromises as the delegation of ecclesiastical powers with the title of Legate, or a share in the right of patronage, or even a mixed jurisdiction as that of the Spanish Inquisition. Notwithstanding this the Popes, in their struggle to prevent the total invasion of their powers by the monarchic authority, were able to maintain an eminent position, thanks to religious tradition and moral influence, to the balance of political forces, and to the growth of theories opposed to absolutism and State particularism.

These theories were qualified as Ultramontanism, as opposed both to the Protestant currents and to such movements in the direction of national churches as Gallicanism in France or Josephism in Austria.

Attempts were made by the Popes to bring about a Reunion of Christian Princes, as it was then termed, in order to resist the Turks, or to promote peace in Europe, or the civilization of the New World; these attempts achieved certain successes, such as those of Lepanto or Vienna, but did little to produce an international outlook. And yet in both Catholic and Protestant countries, under an appearance of co-operation between Monarchy and Church, the rift between the two powers was already widening. And upon the framework of the absolute States, freed from the bonds of Empire and Papacy, modern international law was coming into being, fathered by Alberico Gentile and Hugo Grotius.

§ 6. The centuries of absolutism saw the formation of the great hegemonic powers with their colonial dominions, and marked the steps towards the disappearance of the last vestiges of ecclesiastical and Imperial rights in the international life of Western Christendom. The Papacy sank from the struggle with Louis XIV over the Four Gallican Propositions to the Bull of Clement XIV, which, owing to pressure exercised by the Courts of Europe, suppressed the Jesuits, and the Holy Roman Empire served to afford a decorative title for Catholic Sovereigns. Only at the opening and close of the absolutist period did the Empire find its exponent in a figure of European importance—in Charles V and Napoleon. The first summed up and closed the Middle Ages, wielding effective power as a sovereign, but a power which was no longer that of the feudal and religious representative of Christendom. The second by his coronation in Notre-Dame at the hands of the Pope revived the title amid the ephemeral glory of wars and conquests. But neither saw any further than State absolutism and personal dominion. Each in his own fashion was a secular

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Emperor; neither stood for the Christian universality conceived by the Empire of the Middle Ages.

All the efforts of the modern period have been directed towards a consolidation of State unity, based first on the power of the reigning House, in the Absolute State, and then on that of the Sovereign People, in the National State. The Absolute State was first patrimonial, then paternalist. The National State was first Liberal, then democratic. But the social cycle began and ended within the State and went no further, so that once the ecclesiastic political barriers imposed by Papal power, and the conception of a Christian Empire, and the interests of hegemonic dynasties, had all passed away, international life was reduced to the external relations between Sovereign States and their ephemeral balance of power. At this stage two currents of thought developed, the juridical among the publicists and the casuistic among the moralists. These defined the legal and moral aspect of the terms of relations between State and State, but without any true conception of international community.

The revolutions of the late XVIIIth and those of the XIXth century introduced new elements into the relations between people and people, both in the elaboration of law and the appreciation of moral values; such was the principle of nationality, or the principle of self-determination. They also ripened the seeds of pacifist tendencies. The Christian ideal of the peaceful co-operation of peoples on the basis of a religious principle had been stifled by the absolutist structure of the State that had emerged from the religious and dynastic wars. Reaction had made the humanitarian ideal the foundation of the new international conception. The purely theoretical constructions of Abbé de Saint-Pierre, Rousseau, Leibnitz, and Kant were outside the historical reality of their time; they nevertheless indicated the birth of new tendencies, which would ripen over a century later. At the same time the American and French Revolutions, while containing in their intrinsic logic the elements of a new international tendency, were constrained to sacrifice them to the wars of liberation and defence.

After the Napoleonic whirlwind, which shook the traditional rights of thrones to their foundations, an attempt was made at Vienna to create a species of European unification based on the principles of legitimacy, on police government, and on the control of the smaller States by the greater. So feeble and precarious an order was bound to come into collision with the liberal tendencies, the growth of nationalities, and the play of the great interests of the various States. The birth of big industry, which required the abolition of economic and political barriers and fetters, became the decisive force opposed to the order of the Congress of Vienna. The Absolute States were transformed into Representative States, and at the same time mercantilism gave place to free economy, and the so-called union of Throne and Altar to the separation of Church and State. The system of the balance of power developed, breaking down a fictitious and negative European unity. In this period, therefore, the two most important factors in the development of international relations were, on the one hand, industrialism, which had practically transformed European and American economy and encouraged communications and transport by land and sea, and, on the other, the permanent armies of the national State, which utilized all the resources of science and industry to render the defence of the State increasingly effectual, and as a means of ensuring the balance of power. Industrialism postulated the principles of liberty and a democratic regime; militarism leaned on secret diplomacy and the spirit of nationality. These elements were focused in the Sovereign State, which remained throughout the XIXth century the final and conclusive expression of political organization.

But the moral and political conflict between the ideals of liberty, democracy, and pacifism on the one hand, and the requirements of big industry, militarism, and nationalism on the other, was active on the unstable plane of European equilibrium. It was thought that this equilibrium had been attained after the Berlin Congress, when the Triple Alliance faced the Franco-Russian and Franco-British Ententes, while the

experiment of the Permanent Arbitration Court of the Hague and the Conventions for the pacific settlement of international disputes marked the first timid beginnings of endeavours of international organization.

Unfortunately after the Boer War, the Spanish-American War, and the Russo-Japanese War, the conflict between the efforts to establish a permanent system of peace and the need for increased armaments to weigh down the scales of interstatal balance produced an increasing instability among international forces. The motives of a "European Conflagration" —the term is far older than the Great War—were increased by the demands of industrial economy, urged by political pressure to overstep its potentialities by excessive development, and strengthened by the ever-growing power of the military caste and frenzied nationalism, brought to the fore by the Balkan Wars and the Italian-Turkish War. The tragedy of the Great War, 1914–18, marked the crisis, and this date is the real starting-point for the rebirth of organized and practical internationalism. The elements of a society of States, foreseen and desired under various aspects during the two previous centuries, at last materialized. Postulates of internationalism which had been cultivated for half a century in America were transported to Europe. The seeds of internationalism sown by liberal and democratic currents were fertilized, and the efforts and ideals of super-national Christianity returned to mind. The appeals of Benedict XV and Wilson during the war echoed the great ideals of Christian humanity. The new principle put forward as the foundation of international life, the *principle* of *association*, dates from the Covenant of the League of Nations in 1919.

CHAPTER II

GENERAL LAWS OF THE INTERNATIONAL COMMUNITY

§ 7. Our rapid survey of the formation and historical development of the international community enables us to assert that this is one of the forms of human society, and has, therefore, its general laws.

The generic concept of human society implies the existence of relations: man exists socially inasmuch as he is relative. Human society is neither more nor less than the expression of human relativity, of the relative co-existence of men, and in this sense society in general, apart from any particular form, is a necessary natural datum. This relative existence is not merely physical, but rational and communicative, hence the specific element in human society is precisely its rationality. For greater clarity we may say that man gives the stamp of reason to the elements of his relative life; the most elementary needs of material existence, inasmuch as they emerge in a social environment, become rationalized—that is, they take on human character which is essentially rational.

For this specific reason human society seeks to characterize and give form to the constant or semi-constant elements in human relations. That is, it tends to create and develop social types, justifying their demands, moulding their customs, and enforcing their laws, so that by a kind of gradual crystallization, institutions emerge able to withstand the flux of events and, in so far as is possible, the anarchic forces of antagonism and destruction.

There are those who believe that the only naturally necessary societies are the family and political society, while every other form of human association can only create free or quasi-free relationships within the definite ambit of these two. Some theorists, indeed, believe political society—to-day the State—to prevail over the family to such an extent as to deserve the

name of " the perfect society", and even to be considered the sole fount of right and authority, the limit of every other form of human society. These theories contain exaggerations and errors, as we shall see. Indeed, every constant human relationship affords the constant motive for a form of society; it is, therefore, natural that the family, though it may vary in type, should always predominate as the social basis. On the other hand, the formation of a true political society is tardy, posterior to the development of many other social factors, and is no more than one of the synthetic and synthesizing forms of those particular social relations that we call political.

It is well to note that not all social relations, even if indefinitely repeated, succeed in forming a concrete society, but only those relations to which the historical process has given prevailing significance in the social structure. These relations acquire such significance when they express a group of general interests —in the sociological and not the economic sense; only then do they materialize as social institutions with an autonomy and personality of their own.

"Autonomy" does not mean a separation from the rest of social relations, which would be impossible, but self-dependent existence, the independence of specific and characteristic personality. From this point of view we see in history both the prevalence of social institutions over others so as to absorb into themselves the rudiments of other societies, and social institutions that assume specific character in various autonomous forms. Thus the family widens till it is a public authority; the city or commune becomes a polity or State; religious society is transformed into political dominance, and so on. Christianity brought the destruction of the religion of the family, of tribe or clan, of city or race, of people or Empire; it made religion an autonomous and personal relation between man and God, and at the same time created a form of society distinct from all others—the Church.

Natural needs and historical developments, therefore, contribute both to the concrete formation of social institutions and

special types of society, and to their evolution and modification within the one vast framework of human society. And in that framework we find also from the very beginning that which we have called the International Community—that is, the existence and development of relations between the various peoples, from the most confused and primitive forms of relationship to the most recent and complex. This Community, however, like every other natural society, derives its essential laws from the social nature of man.

§ 8. In the preceding chapter we sought to trace the historical outline of the various phases of manifestation of the International Community as far as we know them. But neither the fact of the contact and contiguity of peoples nor community of interests, nor the dominance of the strongest, nor Christian fraternity, nor the political ambitions of reigning Houses or States, nor democracy, nor balance of power between the States, nor the "principle of association" has ever given us an autonomous, authoritative International Community comparable to the two typical societies, the family and the State. From this historical fact many argue that we must not consider the International Community as a true and proper society, but understand it as a general, indeterminate, and variable form of the relations between people and people. Those who hold this view maintain that such relations may be of two species, those that find their ends in themselves, and those that resolve themselves into the constituent elements of existing and autonomous forms of society, and, in ultimate analysis, into the State. Examples of the first species are afforded by scientific conferences, or any act of commerce, which find their ends in themselves, so that unless they are transmuted into other elements their renewal or continuance creates nothing different from themselves. Examples of the second species are such events as wars ending in conquest, annexation, the vindication of territorial or economic rights, or else legal agreements such as the monetary, postal, or navigation conventions, which, while referring to

matters common to several peoples, fall under the application of each separate State and therefore resolve themselves into the actual activities of political society.

It is clear that anyone reasoning in this fashion fails to conceive the character of human society as other than static and final, and is unable to overstep the limits of a determined order that in substance is nothing more than the quasi-present, or that which we have known and experienced. The same arguments might have been used by a man living four thousand years ago, or might be used to-day by a native of some inland tribe of Africa, who, in considering his own tribe, was unable to imagine, for example, our civilization and the modern State. That is, he might say that no social form could exist beyond the society constituted by the tribal family, and that there could be no social relations other than those finding their ends in themselves, like the gatherings of various neighbouring and allied tribes for feasts and games, or else those resolving themselves into the tribal family itself, like war or pacts of alliance.

We, on the contrary, allow the generic concept of human society all the possibilities of concrete materialization history may hold for it. Thus we consider all possible human interrelations as constituting societies, whether they be formless or formed, initial or advanced, particular or general; whether their aim in the scale of human requirements be principal or secondary, and whether they materialize in an autonomous or derivative form. No one, therefore, can doubt that outside the circle of his own particular nucleus, whether its name be tribe, city, republic, kingdom, State, people, nation, or race, there are relations perpetually developing in a twofold sense, both individual and collective, which tend to acquire juridical status and to give birth to incipient institutions.

This is the rational and natural basis for an evolving society.

In any society the formation of special organs belongs to a fairly advanced stage of development and is always tardy. When human society was prevalently on the family type, the *paterfamilias* was law-giver, judge, captain, and priest. When

the city was also the *res publica*, the administrative and political powers were identified. When religion was confounded with the Empire, the Emperor was Chief Priest. This means that human consciousness has not always felt the diversity even of social relations that are substantially diverse, and therefore the agglomeration or the confusion of social functions in a single organ does not always create inward disturbance. But when any social relation comes to be felt as autonomous and predominant, a stage of historic evolution is reached in which the need is felt for a corresponding distinction of social organs and their activities. Human society tends always to specialize itself. It is no wonder, therefore, that till to-day—or till yesterday—the International Community has lacked a truly autonomous organization, and that instead history presents us with the fact that every effort towards organization has resolved itself into heteronomous powers, whether the rulers of great Empires, or religious and feudal rulers—such as the Pope in the West or the Caliph in Islam—or the Governments of autonomous States, all perfectly equal by their formal sovereignty. This is no evidence that once international relations come to be more vitally felt and still further individualized by human consciousness, distinct organs suited to the historical type of the International Community will not be created. Nor does it matter substantially whether such organs be temporary or permanent, fleeting or stable, simple or complex. All this must be determined by the law of human evolution and vicissitudes amid the workings of voluntary and non-voluntary forces, and this law is not to be evaded even by the societies that we believe to be fully formed and definitive, like the political society represented by the individual State.

Under this aspect the historical and evolutionary values of the International Community are indisputable facts. Doubtless it is possible to assert that the State has taken less time to evolve and has already achieved a social personality, whereas the International Community moves in slower rhythm and the conquest of its social personality is still to come. This is only

natural, although the evolution of both International Community and State, each in its own rhythm, has never ceased for a moment. Indeed, politically organized groups rank pre-eminent among the main factors of an organized International Community. Now the initial instability of such groups, their slow evolution from elementary forms to complex, not seldom their geographic and political isolation, the ease with which strong groups and conquering peoples dominate the rest, the flux of migrations, the wars of extermination, have been historical factors retarding and impeding the formation of the political State as we to-day conceive it. And the same State has had to pass through very long stages before becoming a State *de droit*, and, moreover, even to-day it is very far from constituting a true and complete State by right for all the sections or minorities, or even majorities, dissenting from the ruling authority. Thus even to-day the political Society, though more concrete, is still in process of evolution, with its rhythm, its crises, its involutions.

And this is the case with every human society. Many believe that the family has crystallized into its final form. But from the point of view of its social development this is by no means exact. This family, as history shows, has passed through various economic and social phases, evolving, changing, disintegrating. From it have sprung tribe, clan, class, caste, and city. Once polygamic or polyandric, it has become monogamic, with special treatment of illegitimate children. Its very monogamy, outside the strictly religious and Catholic conception, is to-day attenuated by divorce legislation, and undermined by overcrowding and moral licence. The present system no longer affords adequate economic safeguards to the family, as an institution, and the family, as such, has lost all influence in the political sphere.

We note this in order to illustrate by analogical facts how all social forms are in a state of perpetual becoming, and how within those complexes of social causes to which we give the name of civilizations, the course of the historical process leads

to a mutual loss or gain of such formative or integrative elements as time and place require. Hence, to conceive of human society as fixed in concrete types, with the family and the State as its main expressions, standing as the Pillars of Hercules of its inward elaboration, and to make this conception the grounds for denying the possibility of a concrete organization of the International Community, is to give the lie both to history and to the essential nature of human society.

The International Community, of which the fundamental elements have always existed—for there have always been relations between the various peoples—shapes itself and develops with its own rhythm amid the evolutionary movement of all the other social forms, strengthening its formative elements either by increasing and intensifying the relations on which it rests, or by classifying them and crystallizing them in legal form. And like all other forms of society, it seeks to develop organs of its own—that is, to acquire an ever-increasing autonomy and a distinct and self-dependent personality.

§ 9. A special feature of the International Community is the fact that whereas in theory and by its nature it knows no limits and seeks to embrace all peoples, yet in practice its limits are marked by history, geography, and civilization, so that it gives rise to various types of community. This feature is to be remarked in comparison with the family or the political society; the first, limited as to its natural constituent elements, develops indefinitely by the process of affiliation, and the second, confined within geographical boundaries by its nature and potentialities, develops by a process either of internal unification or external expansion.

The development of the International Community accompanies that of the various centres of civilization and the various political, economic, and religious structures. Through the contact between people and people, and that of one centre of civilization with another, it tends to expand beyond its initial sphere. Our historical knowledge shows us that in various

periods the Mediterranean basin has formed the centre of a zone stretching as far as India, and researches and documents give us a more or less complete knowledge of very ancient civilizations in Asia and even America. Although complete isolation is to be discounted, nevertheless the lack of habitual contact between distant peoples imposed geographical limits to their civilizations and retarded their evolution. For thousands of years the great migrations were causes of contacts, struggles, and the mingling and transformation of peoples. Even relations between individuals of different civilizations, though few and difficult, were not wholly lacking.

Nevertheless, we can say with certainty that till the preaching of the Gospel there was no moral spirit capable of unifying the different peoples, and therefore the basis of an international civilization was wanting. The great Asiatic religions never became international in the true sense of the word. The only ideal basis for unification is the idea of human fraternity, and this can only be effectuated through the lofty and arduous idea of religious and cultural unity. But the immense difficulty was, and for many millions of men still is, the insertion of this idea of fraternity into their family or political life—that is, the universalization of their particularism.

After the introduction of Christianity, history shows us the pre-eminent development of three different and conflicting civilizations—the Western or Catholic, the Eastern or Orthodox, and Islam. The Indian and Chinese civilizations came but tardily and passively into the rhythm of the West; Central Asia and the Far East, Central and South Africa, and the still undiscovered regions—America and Oceania—were for long ages a world to themselves. The religious penetration of early Christianity and the penetration of trade were so slight as to remain as almost invisible lines of human contact.

To-day the geographical development of the International Community is nearly complete; what with political States, colonies, and protectorates, it embraces the whole world,

which has now a fairly coherent political aspect and which is connected from end to end by highways of communication.

Nevertheless, there are still unexplored zones and peoples living in a world to themselves, aloof from international relations, peoples yet to be won to a definite civilization, and peoples with a civilization of their own that is slowly experiencing the influence of the unifying civilization—that of the West. Thus the vast framework of an International Community prevalently political and commercial in character covers various religious or politico-religious communities which maintain their own character, their own customs, rules, and organizations. Among these the most significant even to-day is the community of the peoples of Islam.

But the whole effort of the prevailing civilization, the Christian civilization of the West, has always been directed to binding all peoples to itself, making them its own, not so much by political subjection—where this has been possible—as by permeating the development of their culture and economy, their sense of moral values, and the formation of law. Thus the International Community, as it develops, tends to gather the whole world into a network of those normalized relations known as international law; into some eventual system of organization of which the League of Nations to-day is a feeble though significant beginning; and into a civilization which, in spite of all denials, has come to prevail—the Christian civilization.

§ 10. If the International Community, ever in process of becoming, is one of the concrete forms of human society, the intrinsic law of its genesis and development cannot but be identical with the fundamental law of every form of human society, even if in the concrete this law should take on a special character. Such a law may be formulated as follows: *The more individuals increase in conscious personality, the fuller the development of their associative qualities and forces; the fuller*

the development of such associative forces, the more the individuals develop and deepen the elements of their personality.

To some it may seem as though this law ran counter to the fact that great personalities have always existed, even in ages when social life appears to have been unevolved, or at least not as fully evolved as to-day. The mistake in this judgment lies in considering society from a prevailingly material standpoint, whereas the substance of its developments is human—that is to say, rational. Every age has its giants and its pigmies, but the great men, the loftier their spiritual stature by reason of intellect, morality, religion, or art—all of which are rational elements—the more they tend to radiate themselves and their works even beyond their age. Their social relativity does not cease with death.

Therefore, in order fully to understand this law, it is well to bear in mind certain fundamental notions: (i) The individual is social by his very nature, and all his life is nothing else than a life of relations. (ii) Every individual forms to himself the centre of his own life, and acts and reacts among his fellows, who also form to themselves centres of their own lives, so that there comes to be a continual multiplication of each in others and of others in each. (iii) Hence, the more the individual the comprehensive element develops, the fuller the development of the elements relative to him. Thus by continual action and reaction society comes to be individualized in types, institutions, moral bodies, and the individual to be socialized in the institutions circumscribing his life. Family, city, nation, class, Church, internation, are various social reflexes of this fundamental activity on the part of each individual, and at the same time concrete individual expressions of human society in general.

Let us analyse the workings of this fundamental law of human society with reference to the formation and evolution of the International Community, even though this be still ill-defined and inorganic. Not a few believe that just as human beings are the individual units composing political society,

States, as collective individuals, are the units composing the International Community, and that the law of individualization applies, in the first case, to persons and, in the second, to political communities. This idea is not wholly correct, for in either of the two forms of societies both single individuals and individual communities act and react.

Relations between human groups, whatever the stage of their civilization, and whether in the past, present, or future, are created solely by the acts of living men, whose social capacities and positions affect the specific results of their activities. Thus a missionary will act among other peoples in the name of the Church, a trader on behalf of his firm, a politician or soldier for his State or King. The political relation, however, takes its place among social and international relations; it is a most important specific element which in a given moment may synthesize many others, but it is not the only one, nor in all cases the most effectual or the most conclusive. Ancient Greece, from Sicily to the coasts of Asia, was effectively an international community, and consisted in a racial and cultural system rather than in a political one. Even in the absence of political States the *jus gentium* was a fundamental moral and legal custom throughout the Mediterranean basin. After the fall of the Roman Empire, the international framework of the Church united the peoples more successfully than Imperial or Royal power. But in so far as the International Community is conceived of as a political product, and only as a political product—that is, from a one-sided point of view—it is clear that at the present stage of the historical process its individual basis is mainly constituted by States. But we must note that the political States of to-day have summarized in themselves many other elements of cultural, economic, and individual life, and seek more and more to become the sole organs of human synthesis. Hence their prolongation in the international community to-day is not confined to the political field but overflows into those of economy, culture, and morals.

The law of "Individuality—Sociality" of which we speak

operates, therefore, on three planes of international life: (i) In the development of personal relations between individuals of different groups in the field of economy and culture in general. (ii) In the development of relations between individualized groups (peoples, tribes, cities, nations), first as a reflex result and then directly. (iii) In a still wider development of those human complexes which we call civilization. All these combine to form the International Community, which comprises those special political formations to which the process of the history of the various civilizations has given various concrete aspects.

We have seen in Chapter I the historical development of the International Community. In that imposing mass of elements it is easy for us to discern how the twofold tendency of "Individuality—Sociality" has shown itself both in the zones of one and the same civilization and in the inter-relations of different civilizations. And it is easy to see how the collective units represented by the various peoples, however organized, have felt the immense influence of great personalities, especially in the field of religion and culture, and thence reflected in that of social organization. Socrates, Plato, and Aristotle are a greater international force than Alexander the Great or Pericles. Moses, Buddha, and Mahomet are more living to us than Nebuchadnezar or Ahasuerus, or any of the great Pharaohs. Jesus Christ (from the purely historical aspect of His personality, which for Christians is also Deity) is in Himself the ever-operative centre of the greatest of international revolutions. The Popes even to-day are a more living force than were ever Roman or Holy Roman Emperors.

In contrast to the continuity and predominance of the ideal and moral forces individualized in great personalities, we find the transience of empires, kingdoms, federations—that is, of the concrete forms of collective individuality of a political or politico-economic character. A curious mirage leads us to believe political structures stable and indefeasible at the very moment that they are bringing into being the germs of their

transformation and decay. We have seen the fall of Imperial structures, such as those of the Russian, German, and Austrian Empires, which a few years ago seemed impossible, and in a century and a half the United States of America, which were no more than European colonies, have risen to the position of a first class Great Power.

The influence of the great human currents—that is to say, of the visible and invisible contact between people and people, on the forming and reforming of political unity—is such as to enable us to say that the fluctuating mass which constitutes the International Community becomes politically individualized in the formation of States, by means of a ceaseless process of association and dissociation. And in each phase of its history political society represents the concrete product of international forces of culture and economy expressed in political synthesis.

Hence we may conclude this first analysis of the Law of "Individuality—Sociality" by emphasizing the complex fact of an international sociality effectuating itself in the relations between people and people through the medium of personal units (men) and collective units of varying nature. These relations materialize in types of society which assume concrete form none the less variable and in continual evolution. Finally, among such concrete forms, the various States are the collective units synthesizing and giving political expression to the forces of the International Community.

§ 11. "Sociality" cannot remain a matter of merely individual relations, but tends of itself to some form—it may be elementary—of organization; that is, to the establishment of a hierarchy of forces. In the International Community this is constantly occurring, though within the larger or smaller compass of given civilizations. As we have seen, culture and economy postulate some formation of political society which, for all its instability, becomes to a certain extent their surety and synthesis, influencing and being influenced by their development or decadence.

Now the political unit is an organization by instrinsic nature. This organization is mainly internal, and is expressed by power. Power has two modes of asserting itself, law and force; while force serves both for the enforcement of law for the defence of power. But political organization does not remain within the limits of each political unit. It extends and dilates in contact with other political units within the International Community. This expansion has the three-fold aspect of *Power*, *Law*, and *Force*. The interplay of these three factors produces the variations of political forms within the political units, and of these it determines the formation and decay; it also causes the fluctuation of the forms of organization of types of society embracing whole racial systems, or even wider civilizations still. In this international sphere it matters little whether the exponent of power be called Emperor, Pope, Caliph, or federal President, or social leader, or whether law be customary or conventionary—*jus gentium* or international law, or whether force be wielded by hegemonic peoples or races or be evenly distributed among the States. All this is shown by history; but in even the most elementary or incomplete organization of the International Community these three factors can never be absent.

History shows us notable examples of the transfer of the centre of gravity of peoples to determined hegemonic centres, which represent a hierarchy of forces, and thus amorphous international organization. Athens or Alexandria, Carthage or Rome, Constantinople, Madrid, Vienna, Paris, Berlin, London, Washington, are examples both of the polarization of forces in determined centres of which the dominance overflows their political limits into the international field, and of the historical fluctuation of such forces with the ebb and flow of the internal consistency and power of attraction in the political centres of dominion.

But the growth of social organization is as hesitant and unstable as the growth of individuality. Both are perennially dynamic, but this dynamic force is not blind but rational.

Thus both "Individuality" (men and communities) and "Sociality" (domestic or international), in their perennial dynamism, tend to the achievement of personality—that is, to self-consciousness and autonomy. Power, law, force, as the political factors of States and of the International Community, must be rationally conceived in the individual and collective consciousness in order to reach the stage of true autonomy—that is, of rationality. The fuller this consciousness, the more the rationality of our social being gains in profundity; the more will political institutions, national and international, gain soundness and stability in a higher stage of development. For thus *Law, the rational element, takes precedence over Force, the irrational element; and Power, the social organ, comes to rely more on Law than on Force.* Under this aspect, even if the forms of institutions change, the modern State is more stable in constitution, and will gain in stability as the power of the State relies less on force and more on law.

Given, however, the political and organized relations between the political unit and the International Community, on the three-fold basis of power, law, and force, we come to see how the progress of the International Community towards organization and self-consciousness as a political entity depends on the achievement of conscious personality by the various States. The law of "Individuality—Sociality" has here full play. "Individuality" leads to organized "Sociality", and organized society deepens the elements of its personality.

This law is always in force and functions according to the stage of development attained by the individual and social factors. To-day among civilized peoples we have a determined type of State, which we call the modern State. Yet we cannot say that the modern State, with regard to its internal consistency and its political and geographical limits, has everywhere achieved an equally stable and well-defined individuality. Indeed, the achievement of political personality on the part of a people is a slow and arduous process, beset by many factors productive of deformation and confusion. Thus even

in this field we find a gradation, from those peoples that are more stable, with a traditional unity, and historically conscious of their origins and development, to peoples that might have been born to-day or but a short while ago, so small is their consciousness of past existence. There is an aristocracy, an *élite*, even among peoples, and such have a living tradition which makes them conscious of their being and of their political personality.

All this, carried on to the plane of an organized International Community, makes it clear that the true and pre-eminent elements of organization are provided by those peoples with an individuality already formed, a greater moral significance, and which are more stable as regards power, more respectful as regards law, and more rational as regards force. For this very reason the Christian civilization of the West predominates in the International Community, not only from the point of view of culture and economics, but in the strictest sense of political organization.

§ 12. But the crucial problem of international organization is precisely the attribution to it of autonomy and personality through the political factors—power, law, and force. Is it conceivable that power, law, and force should be wielded simultaneously by single States and the International Community? This is the problem we mentioned in § 8 and which we can now consider in the light of the foregoing analysis. There are many who, from the philosophical or sociological standpoint, or from the strictly political standpoint, maintain that only one political power can be genuine and actual, and form the synthesis of human society; this is represented by many territorially distinct powers which are politically and socially equal. No other power can of itself possess either law or force, or be other than limited and subordinate, both legally and politically. If there comes to be a union of States, like the League of Nations to-day, this does not constitute a power, but is only a social product; its law, like all inter-

national law, is tacitly or expressly accepted by each State, and its force is the voluntary or pledged force of its members.

Of the international situation of to-day we will speak in the following chapters, and in Part IV we will deal with the practical possibility of an authoritative and autonomous organization of the powers of the International Community. Here we will confine ourselves to the study of the theoretical problem in the light of history and sociology.

Now it is true that theoretically there is only one political power, but it is not at all true that the whole of this power should be concentrated in a single organism, nor that such an organism should reserve to itself law and force, nor that such an organism can only be the State. It is a fact that the State has monopolized all power both in its interior, where it has suppressed or subordinated all other powers and set itself up as the sole fount of law and holder of force, and in its relations with other States as a result of the absolute and equalitary conception of sovereignty. Notwithstanding this, other powers to-day, as always, continue to exist, either potentially or effectively, with other sources of law and other forms of force, and this both at home and abroad, so that there arises that salutary duality of forces by which energies are generated amid struggle and friction. Instances of these other powers are racial or political minorities, the Press, the Church, the municipal and local government bodies, the internationalized workers' organizations, the great industrial and commercial trusts, the international movement, and so on. All these are forces operating each in its own field, but finding expression on the political plane and possessing political potentialities.

Apart from these facts, which may be diversely appreciated, no one can doubt that even political power may be distributed and differentiated in a multiplicity of organs. So history shows us in, for example, the feudal and ecclesiastical society of the Middle Ages, and, indeed, the same may be said of the domestic order of those States in which the separation of powers is well

maintained, or which, like England, the country of self-government, allow the survival of ancient and respected immunities and autonomies. The economic tendency of trade-unionism to-day is a disintegrating factor with regard to the political monopoly of the State. In the international field all interstatal organizations have always represented a genuine if elementary form of exercise of power on a basis of general juridical postulates.

From the theoretical or sociological point of view, however, there is nothing to prevent the distribution of political power over State, interstatal or international organs. The United States of America and the British Commonwealth are initial and peculiar types proving such distribution to be possible. And from the legal point of view it cannot be denied that the Permanent Court of International Justice and the League of Nations are organs of power and possesses at least a limited form of personality and autonomy. And again, it is by a legal fiction that publicists maintain the whole of international law to be at bottom conventionary and voluntary, for, on the contrary, a great part of such law is the genuine and actual product of the International Community.

There are some who deny that international law is true law, since it has been formed not by authoritative bodies but only by custom or convention and lacks effective means of enforcement. This view has no great following among sociologists and jurists, inasmuch as it judges law by the formal and external elements of the written law of the State, and makes these formal elements the sole criterion for judging the legal ties of a society *sui generis* like the international society. Certainly to-day the formal element of international law is adequately supplied by custom, law, and conventions, and since the creation of the League of Nations and the Permanent Court by their decisions, when these are political or legal rulings of a general character. No further sanctions are required than those provided by the moral conscience of the time, by the efficacy of common usage, and by the penalties established by convention. Authoritative

forms and penal sanctions are the product of a more advanced stage of organization.

The most difficult question, however, is that of the organization of force. We use the word "force" not in the sense of brute force nor as separable from authority to exercise it. Nevertheless, we can conceive of the use of force as either rational, that is lawfully exercised by legitimate authority, or irrational, that is dissociated from legitimate authority or unlawfully exercised by legitimate authority. So much granted, we must note that when force resides only in private organs (families), these in practice become public organs absorbing all other functions; and when force resides simultaneously in private and public organs (armed parties or families and the State), we find the maximum social disintegration and a dispersion of energies to the point of anarchy. Again, when force resides in more than one public institution, we find either subordination or conflict of powers. And when force resides in a single public institution, as in the State to-day, this becomes not only predominant but all-absorbing and monopolistic; hence, by the logic of contraries, it posits the limitation of all other energies that may be the equivalents of force. It is plain that so long as force is the monopoly of States, these and no other institutions will hold predominant power in international life. Yet it is also clear that this fact postulates a limitation resulting from the exaggerations to which the monopoly may lead, and hence from irrational use of that same force.

Even on this ground there are significant symptoms taking the outward form of voluntary acts, such as the attempt at a limitation of armaments, the control of the manufacture of arms, the institution of an international police-force in disturbed countries or at strategic points, the control of States by the League of Nations, the neutralization of zones imperilling international peace and security, the disarmament of the vanquished countries, and so on.

But the working of the three factors—power, law, and force

—demands in accordance with the law of "Individuality—Sociality", as we have already said (§ 11): that Law, the rational element, should take precedence over Force, the irrational element; and that Power should come to rely more on the Law than on the Force. Interruptions, deviations, struggles notwithstanding, this represents an irresistible social trend. The International Community will, therefore, take shape with an ever-increasing autonomy, gaining in personality the more law comes to predominate over force. Force will not be abolished, but its predominance will. The problem of the distribution of force between State organs and inter-State or international organs will seem neither theoretically impossible nor practically harmful. On the contrary, it will come about gradually and of itself, as the International Community improves in organization and thus acquires political personality. It is said that this would mean the existence of a super-State, abhorrent to the modern idea of the State. But there is no need either to make the modern State the Pillars of Hercules of political organization or to be afraid of words. In any case, though contained within the sphere of voluntary human acts, the evolution of society through the deepening of the individual consciousness is irresistible.

Nevertheless, it is said that in international relations the problem of force converts itself into one of war. Whereas in the domestic affairs of States force has been almost everywhere rationalized and serves solely either for purposes of judicial constraint or for the tutelage of order, in the International Community force has been in no wise rationalized and still remains a means in itself for settling interstatal disputes. Indeed, the whole formation and development of the International Community in its political aspect is so closely bound up with the fact of war, in a historical concatenation of which the beginning loses itself in pre-history, that it is believed impossible for law, the rational element to take precedence of force, the irrational element in the International Community.

In the following parts of this work we propose to treat of the problem of war in all its aspects. Here we will confine

ourselves to noting that notwithstanding the constant fact of war, even if war were to continue to be reputed a legitimate means of settling disputes between people and people, this would not forbid either a distribution of the exercise of force among the public organs of the State and those of the International Community, or, on the other hand, could it prevent the development of human society in the direction of an increasing rationality, and hence an attentuation of force and a better appreciation of law.

CHAPTER III

THE INTERNATIONAL COMMUNITY OF TO-DAY

§ 13. From what we have already set forth we may deduce that the International Community in its present stage, considered strictly from the point of view of its political organization, resolves itself into the States themselves, inasmuch as *Power*, *Law*, and *Force* are vested in the State, and it is by the States that these political factors are projected on to the international field.

The modern State originates with the absolute State. As we saw in Chapter I, the patrimonial State became the paternalist State, which was followed by the national State with its two-fold tendency, liberal and democratic. The two formative principles in this imposing structure which has lasted out four centuries have been, first, a sovereignty independent of any and every extraneous authority, and secondly, administrative and political centralization. The first destroyed all vestiges of the feudal subordination of one State to another, and any real graduated co-ordination of powers in respect of Pope and Emperor. The second suppressed or reduced to complete subordination all free and autonomous bodies, immunities, and feudal or corporative rights that might conflict with the power of the State.

We have already noted how the modern State at its origin rested on an absolute principle, that of the Sovereign by Divine Right, and thereafter on another absolute principle, that of the Sovereign People, whence arose, in direct line of descent, the conception of the Nation as a permanent entity. Philosophers and sociologists explain this entity—State-People-Nation—as a living organism, an absolute and unlimited force, self-conscious, self-constituted, self-ruling.

It is clear that none of these conceptions allow room for any super-State—that is, for an International Community, self-constituted, and with a significance and rhythm of its own.

For thus not only does everything exist within the State, but by the State and for the State.

International law, born with the formation of the sovereign and absolute State, till yesterday adhered strictly to this conception, giving the State the fundamental significance of an irresoluble entity, sole and real fount of law, and obligation in relations between people and people, sole and indivisible power, and, in virtue of its office as custodian of order, sole holder of force. The French Revolution, which in 1790 transferred the right of peace and war from the King to the People, left the legal conception of the State intact. The principles of *liberty* and *nationality* restricted where they did not overthrow the absolutism of Kings in domestic affairs and undermined their dominion over foreign peoples. These two principles formed the basis of the right of the peoples to autonomy, and hence to national personality. Yet in spite of the practice of a century and a half, during which freedom was won first by the Americas, and then by Greece, Belgium, Italy, the Balkan States, the British Dominions, and the States formed after the Great War, it cannot be said that the principles of nationality and liberty have passed from the political stage to the legal stage of recognition in international law. Indeed, the most accredited among modern theorists, while recognizing their moral significance, are almost unanimous in refusing them any strictly legal force.

The principle of liberty gave birth to the right of *plebiscite*. Ever since the French Revolution it has been customary to insert a clause providing for a plebiscite in treaties concerned with the transfer of territory from one State to another, or the recognition of the autonomy of any people. But even in the most recent peace treaties this clause has not always been added; jurists consider it non-essential or a matter of political expediency, and some, indeed, believe that it is inimical to the true concept of the State.

The principle of nationality gave birth to that of the right of *autonomy*—that is, the formation of a State by self-determina-

tion, and hence the possibility of its separation from the State to which it formerly belonged. International law to-day confines itself to admitting the possibility that foreign States may recognize the belligerent status of peoples vindicating their national autonomy by force of arms. Since the Great War and the formation of the League of Nations, international law has come to admit the concept of *minorities*, which are protected by treaties and even placed under the vigilance of the League. Although this has appeared insufficient in the case of Armenia, it is, however, a great advance, and has introduced a new factor into the domestic politics of the various States. Before the war minorities were subject to the domestic legislation and complete sovereignty of the State.

From the same principle of liberty is derived the right of *the freedom of the seas*. The first serious attempt to regulate this extremely complicated matter was the Declaration of Paris (April 16, 1856), by which privateering was abolished, and it was agreed that enemy's goods, with the exception of contraband of war, could not be confiscated if carried in an enemy ship flying a neutral flag or by a neutral ship flying the enemy flag; and that blockades, in order to be binding, must be effective—that is, maintained by sufficient forces to prevent access to the coast of the enemy. The Naval Conference held in London in February 1907 approved a regulation carrying out the spirit of the Paris Declaration, but this regulation was not ratified by many of the signatory Powers. Benedict XV, in his letter of exhortation for peace (August 1, 1917), and Woodrow Wilson on January 8, 1918, in his famous Fourteen Points, both set out in full the theory of the freedom of the seas, which has always been upheld by America, but at the Peace Conference the matter was passed over, the excuse being that in a league of States, in which the right of war was to be abolished, the seas would naturally be free, as in time of peace. The problem is as yet unsolved; it is closely linked up with that of naval armaments, which underlies it in the military and political-economic sphere.

In the same category of rights deriving from the principles of liberty and nationality we find the *Monroe Doctrine*. The President of the United States, James Monroe, on December 2, 1823, proclaimed the principle of non-intervention in the affairs of Europe on the part of America, and opposition to any European intervention whatever in the affairs of America. Other American States associated themselves with the Monroe Doctrine. This was a unilateral statement, and was considered a mere matter of policy, in substance contrary to international law, both as formulated by Monroe and as restated by Grant, in 1870, in his Declaration ruling out any possibility of the annexation of American soil by a non-American State, even at the request of the population concerned. It received, however, indirect recognition on the part of the European States, inasmuch as it found a place in the formal declaration of the United States at the Hague Conferences of 1898 and 1907, and in Article 21 of the Covenant of the League of Nations.

Nevertheless, in spite of the fact that during the last century and a half there have been many political happenings bringing into being new factors and new policies, as we have seen, the form of international law has remained bound up with the strictest conception of State sovereignty. And for the most part the jurists, having abandoned all idea of natural law as the fount of positive law, have been led to affirm that even in the international field the State is the sole and indisputable fount of right and law.

From this Strupp, in a notable study, deduces that "International law is created by the State", and, as a result, "international public law is a law of co-ordination and not of subordination", and that "States are bound only by the norms that they freely and voluntarily accept", and finally, that "the norms of international law do not *ipso jure* cancel the domestic legislation of the State, but give rise to an international obligation, in virtue of which the State must bring about the penetration of international law into its domestic law". For the same reason, "those subject to international

public law are all persons and communities that the States, sole creators of international public law, recognize as capable of holding international rights and duties".

The last assertion is an opinion which some modern writers on international law do not share, but which has been the prevailing opinion up to to-day.[1]

§ 14. It is natural that jurists should be strongly attached to traditional formulæ and to safe and certain constructions which, even if their title is only apparent, remain always as cardinal points amid the variations of events and social evolution. On the other hand, so long as power and force remain in the hands of the States, law, even in its international bearings, finds a firmer foundation in these organs of social life.

Nevertheless, there is to-day, a growing appreciation and recognition of a principle which, while no novelty in international life, has acquired relief and significance from the new tendencies—the principle of the *interdependence of States*, which corrects and limits the once uncontested principle of absolute independence. The jurists add that interdependence means only co-ordination and not subordination, but this is a subjective interpretation of the facts, and one which the more advanced jurists themselves dispute.

In the meantime it will be useful to trace the course of events affecting the interdependence of the various States, to see what fresh seeds have been sown in this field by legal institutions or attempts at international organization, so as to modify, in a measure, by necessary co-ordination and international interdependence, the politico-legal tendency of the independent State.

During the XIXth century the most present needs were economic and social, the result of a widening field of vast

[1] I have quoted Strupp as one of the most authoritative authors of the German school, holding a position corresponding to that of Anzilotti in the Italian school, Fauchille in the French, and Lawrence in the English.

communications and general interests. Hence the States felt the need to bind themselves by treaties and to seek the establishment of general norms and the creation of unions or distinct organs with certain technical functions. The result was the Universal Postal Union (1874–8), the International Telegraph Union (1865), the various Railway Conventions (1890, 1908, 1924) and International Union of Railway Administrations (1897); the conventions referring to Maritime Ports (1923), motor-cars (1909), and airways (1919); the International Public Health Office (1907).

Other and more important treaties concerned the protection of persons both as regards hygiene and material matters, and morals and religion. Thus, as early as the Congress of Vienna (1815), conventions or special clauses were agreed upon with a view to the war on the slave trade, and at the Congress of Berlin (1878), for the protection of the different religious denominations. Later, other Congresses passed restrictions against the White Slave Traffic (1904), measures for the suppression of the circulation of obscene publications (1910), and similar matters. It is superfluous to mention the many conventions and agreements concerning international private law, intellectual co-operation, the protection of agriculture and animals, the monetary system, and the system of weights and measures. All these treaties and conventions, while remaining strictly within the limits of inter-State co-operation, already show a recognition of interdependence as a moral and material fact, and an effort to abandon an irrational isolation. America felt the same need far more strongly, though still holding to a purely Continental conception of America as one whole, through a natural repulsion to Europe, once mistress of the American colonies. Yet the elaboration of an American international law, the series of important treaties, the various Pan-American Congresses, even the unsuccessful attempt to found a "Central American Permanent Court of Justice" (Washington Convention, 1907), have contributed not a few elements, both theoretical and practical, to modern international law.

The first and most significant European and World experiment, and one marking a starting-point in international organization, was the institution of the Permanent Arbitration Court of the Hague, created by the conventions of 1899 and 1907, for the pacific settlement of international disputes. This was only a timid tentative, not a genuine organization of international justice, but a permanent centre qualified to form arbitration tribunals whenever any States had voluntary recourse to it. This sufficed to create a specialized body of jurists, an arbitral procedure, a nicer sense of tradition, and a central point of reference—all of which signified an incipient organization, however slight and feeble. It is plain that the Hague Court could not do more than its constitution allowed; nevertheless, up to the outbreak of the Great War it had settled fourteen cases of dispute referred to it for arbitration.

The use of arbitration as a means of settling disputes between the various peoples is very old. The Middle Ages knew and practised it in their special setting, but with the XIXth century, arbitration becomes more frequent and rational, forming a complex of uses and procedure which penetrates into international law. From 1794 to 1900, 177 cases of arbitration have been counted. The evolution of the modern conscience has led to a tendency to make arbitration compulsory and permanent instead of voluntary and occasional. A timid step in this direction is marked by the promissory clause inserted in many treaties, providing for the settlement of eventual disputes by arbitration. To resort to arbitration in an open quarrel, and on definite grounds, is indeed very different from an agreement to have recourse to it in eventual cases yet to arise, even if these be determined as regards species and significance.

In spite of this, before the Great War, the effort to create a system of compulsory arbitration remained fruitless. After the war the *Permanent Court of International Justice* could be created by the agreement of December 13, 1920.

Here we enter upon a phase of international law justly specified as the post-war phase—that is, posterior to the war,

and its logical if not wholly historical consequence. It is here opportune to consider the new organism, the *League of Nations*, towards which the institutions of international law, old and new, converge, or from which they acquire a different aspect and significance. But in the fabric of international organization there are two formations previous to the League, but approaching it in various points. These are the *Pan-American Union* and the *British Commonwealth*.

§ 15. The Covenant of the League of Nations occupies Articles 1 to 26 of the Treaty of Versailles, and seeks, as is stated in its Preamble, "to promote international co-operation and to achieve international peace and security, by the acceptance of obligations not to resort to war; by the prescription of open, just, and honourable relations between nations; by the firm establishment of the understandings of international law as the actual rule of conduct among Governments; and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another".

The measures contemplated in the Covenant for the forwarding of this lofty purpose are as follows:—

(i) Reduction of armaments to the lowest point consistent with national safety (Arts. 8, 9).

(ii) Compulsory submission of disputes either to arbitration or judicial settlement, or to inquiry by the Council of the League (Arts. 12–15).

(iii) A Permanent Court of International Justice (Art. 14).

(iv) Repressive measures on the part of the League and of the Member States against any State resorting to war in breach of the Covenant (Arts. 10, 16).

(v) Extension of the Covenant to non-Member States in dispute with a Member State or States (Art. 17).

(vi) Extension of League intervention to the colonial system, and the creation of a new legal institution, the Mandate under League responsibility (Art. 22).

(vii) Publication and registration of treaties, the abrogation of obligations inconsistent with the Covenant, and the eventual reconsideration of existing treaties (Arts. 18–21).

(viii) Measures concerned with economy, labour, social welfare, and all international undertakings (Arts. 23–25).

The Executive machinery of the League consists of (i) the Assembly of Representatives of Member States; (ii) the Council, on which the Great Powers—to-day Great Britain, France, Italy, Japan, and Germany—have permanent seats, while the non-permanent seats, some of which admit of re-election, are distributed among the other powers; and (ii) a Permanent Secretariat. The decisions of the Council, and normally of the Assembly, save on questions of procedure, must be reached unanimously before they can be binding and final (Art. 5). Permanent and temporary commissions, and special Commissioners, assist in carrying out the complex task of the League of Nations.

The basic principle of this great international fabric is commonly known as the "principle of association," which comes within the setting of the principle of *State interdependence and co-operation.*

All States have not entered the League of Nations. Among the great States of especial world importance, the United States and Russia are absent. The United States, while agreeing with the spirit of the League and its pacific aims, do not accept its form; they have assisted as observers at various conferences or assemblies. Russia is hostile to the League on principle, in virtue of the Communist constitution, which holds her aloof from the sphere of the other civilized States; nevertheless, she has taken part in the disarmament initiative. Another important group outside the League is that of the Mohammedan States—Turkey, Egypt, Arabia, and Afghanistan. Equador, Mexico, and Costa Rica are also outside the League. Spain and Brazil, moreover, have withdrawn from the League with the established two years' notice; Spain, however, has already returned, and it is not unlikely that Brazil will do so also. In

any case, the movement towards the League has entered into the general consciousness.

The fact that the United States of America, Russia, Brazil, and other American States are absent from the League (the Argentine has only rejoined it recently), and that out of the Asiatic and African States, Japan alone has significant and political personality (China as a State being in a condition of chaos), has created a belief that the League is merely a European organization for the furtherance of European interests. Under a certain aspect this may seem true; nevertheless, the significance of a League one and the same for the whole world, a League of which any State can become a member, has a moral force and legal consequence far more important, at any rate for the present, than its real political value.

Within the framework of the League various legal institutions have made a beginning or gained new significance. First among these is that of arbitration and international justice. The organization of public justice in any society is the sign and token that such a society is evolving in the direction of greater civilization, and is, indeed, the basis of the organization of the State. What was wanted was an advance from the idea of voluntary arbitration to that of compulsory arbitration, from a mere permanent bureau such as the Arbitration Court of the Hague to the Permanent Court of International Justice. The step was a difficult one, hence up till to-day the progress in this direction has been of a limited and preliminary character —a general norm that Member States in cases of dispute must fulfil a species of alternative obligation, and resort either to judicial settlement or to inquiry by the Council or Assembly of the League. Moreover, it has been stipulated that the various pacts between particular States shall contain the promissory clause by which any eventual dispute shall be referred to either special tribunals or the Court of International Justice for arbitration or judicial settlement. The Treaty of Locarno is the best known and most important of these pacts.

The Permanent Court of International Justice is an indepen-

dent and permanent judicial body, chosen regardless of nationality. The names of candidates are proposed by the Arbitration Court of the Hague, and the election of titulary and deputy judges is carried out by the Assembly and Council of the League respectively. It is interesting to note that not a few States have already signed the "Optional Clause" (Art. 36), thus undertaking to submit their eventual disputes on matters of international law to the Court of Justice for judicial settlement.

A new international institution born with the League is the *Mandate*, a true legal institution of international tutelage. By the Treaties of Versailles and Lausanne certain territories have passed under the tutelage of the League, which governs them by means of Mandates entrusted to sovereign States or Dominions under the supervision of the Mandates Commission. The Mandated Territories consist at present of certain territories of the ex-Turkish Empire—Iraq, Syria, and Lebanon, Palestine, Transjordania—or ex-German colonies. The first, when they have reached a stage of political development enabling them to stand alone, will form real States, whereas the ex-German colonies, in view of the sparseness of the native populations, for the moment and unless the League takes other measures, seem likely to remain under mandate.

Undoubtedly the institution of mandates has great political and legal significance, both in relation to native peoples and to those not as yet politically organized. In any case, it is an institution that may extend still more, possibly to territories the strategical importance of which renders it desirable that they should be removed from State rivalries and State monopolies.

From this point of view the competence of the League is capable of still further development, so as to give a general character to the private conventions between certain States declaring determined territories international or perpetually neutral. The first international recognition of *perpetual neutrality* dates from the Congress of Vienna and concerns Switzerland (1815), though from the Middle Ages Switzerland has always

proclaimed and safeguarded her neutrality. Later, the following States were declared neutral by particular pacts between the States concerned: Belgium (1830), Luxemburg (1867), Albania (1913). In the same way special tracts of territory have been declared neutral by treaty, among the most important being the Black Sea (1856), the Suez Canal (1888), the Panama Canal (1850–1901), and the Strait of Magellan (1881).

After the war, and as a result of the Peace Treaties, the most important cases of perpetual neutralization are those of the Left Bank of the Rhine (1919), the Bosphorus, and the Dardanelles (1923). One of the most famous examples of internationalized territory is Tangiers (1923–8). The League of Nations, again, is trustee for the Territory of the Sarre (1919).

Although these achievements are either the result of private treaties or were imposed by war, to-day they all come within the sphere of the League, which may recognize—though to do so it must reach an unanimous decision—the need for making any determined territories neutral or international.

We have already referred to the *Protection of Minorities*, entrusted to the League of Nations. We mention it here as an example of an international achievement resulting from the League.

Yet another legal institution is the *Registration of Treaties* with the League Secretariat as a condition of their binding value—that is, the implicit and pledged abolition of all secret treaties and of their value. This is a natural consequence of the "principle of association", of State co-operation, and also of the principle of the publicity of acts entailing international obligation. This is an achievement of great significance, and one which was only possible with an international organization recognized by Covenant as able to impose obligations.

Still more important is the principle of the *Reconsideration of Treaties*, promoted and effectuated by the League of Nations in accordance with Article 21 of the Covenant.

The League is also an organ of culture and social progress, and Article 23 enumerates its functions in this respect,

beginning with the regulation of international labour law. The International Labour Office is therefore a part of the League, and has already rendered great services to the cause of labour and civilization; the same applies to the Committee of Intellectual Co-operation and the International Relief Union. Other functions enumerated are the care of the treatment of native populations, the problem of emigration, the measures against the traffic in women and children, child welfare, the control of the traffic in arms, the guarantee and maintenance of free communications and transit, and the international measures to fight disease.

Other important work and initiatives concerning control of the disarmament of Germany, Austria, Hungary, and Bulgaria, the systematization of the finance of various countries, the codification of international law, the exchange of the Greco-Turkish populations, the protection of political refugees, and the international economic conferences; these indicate the endeavour to overcome post-war difficulties, and are also in themselves precious contributions to inter-State co-operation, giving an ever-increasing significance to collective interests in international life. The list is a long one, but it shows the ever-growing importance of the League's work.

Of the particular task of the League regarding the averting and prevention of all war, and of the theoretical and practical bearings of the separate provisions, we will speak when we come to deal with war itself.

§ 16. The idea of a permanent understanding among all the States of the American continent originated with Simon Bolivar, President of Colombia, who, in 1825, called an inter-State conference at Panama, which, in one of its most interesting resolutions, advocated a species of perpetual league among American States. A series of events prevented the ratification of the resolutions of the Conference by the States concerned, and the initiative proved fruitless. In 1889, however, it was renewed by the Washington Conference, which was supported

by eighteen States. Its aims were confined to economic understandings, but it laid the foundations of what was to become known as "Pan-Americanism". The next Conference, held in Mexico (1901–2), and supported by all the States of the Americas, led to the signature of an important series of conventions affecting matters of private law, such as the legal status of foreigners, and the exercise of the liberal professions. At this Conference the question of adhesion to the conventions and declarations of the First Hague Conference, and that of the codification of international law, were discussed, and it was then that the *International American Union* was founded, with a permanent office.

The IIIrd Conference was held at Rio de Janeiro in 1906, and other conventions were signed concerning questions of nationality and similar matters; while its organization was improved by the institution of an *International Office of the American Republics*, with headquarters at Washington.

At the IVth Conference, held at Buenos Aires in 1910, the Union received its final title as the *Pan-American Union*, and the range of its programme of sanitary, commercial, and customs agreements was enlarged. At the Vth Conference, at Santiago in Chili, in 1923, besides decisions on economic questions and private law, many resolutions were passed concerning the codification of international law, the best way of applying judicial and arbitral settlements to inter-State disputes, and the legal position of foreigners resident in America.

At the VIth Conference, held during January and February 1928 at Havana, there were interesting debates on the acceptance of compulsory arbitration at the Hague Court, on economic co-operation, impeded by the protectionist system, on aviation, and on the command of the seas. The text of the new Pan-American Convention was also approved. Even the delicate question of the limits of the intervention of one State in the affairs of another was discussed but the Conference by a majority declared itself against all such

intervention. The most noteworthy resolutions passed were those concerning aggressive war, "held to be illegal, and consequently prohibited", and compulsory arbitration.

The American experiment has great importance in the international field, not only because of the attempt to unify and agree upon both public and private international law, but still more because of the tendency to oppose all use of war for the settlement of inter-State disputes, and the tendency towards a codification of law. The contribution of American jurists and statesmen in the field of international law is considerable and has a particular value, for American international law is developing as a new creation, unfettered by the inevitable ties binding European jurists to a past of which they feel the full weight. Maybe in time there will come to be a real League of American States, with an American Court of International Justice and a legal code of its own. The spirit of the Pan-American Union is a spirit of inter-State co-operation, on the principle of persuasion and solidarity without any need for coercive measures, but the plane of its working is still uncertain and oscillating.

From the political point of view there is considerable anxiety in many States of South and Central America lest the United States should make the Union an instrument for the exercise of a real hegemony. The intervention of the United States in various States, and at the present moment in Nicaragua because of the instability of the Carib Islands zone, and in Mexico, and their financial control in Peru, Bolivia, and Venezuela, render the Pan-American Union morally feeble. Nevertheless, it contains elements of vitality and development, and responds to important requirements in the international life of the American continent.

Another type of international society, a *quid medium* between society and Empire, is afforded by the *British Commonwealth of Nations*—the latest and significant evolutionary phase of the Empire, in which old colonies and countries once united to the Crown have assumed the rank of free States, self-governing

and maintained in union with the United Kingdom not so much by the link of the Crown as by a continual and ever-widening appreciation of political, economic, and moral interests; they thus form a true, if unique, system of federation. There has never been a type of Empire so free in its administration and legislation, domestic and foreign, with a union based on simple consent, with no powers of constraint, either legal or material. In the Statutes of the Dominions, as approved on November 19, 1926, it is established that "they are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations".

We have here, therefore, rather than an Empire, a genuine League of Nations, but one with a far closer solidarity than either the Pan-American Union or the League, insomuch as for reasons of history, race, and political and material interests, this solidarity has grown up and ripened in the consciousness of the populations concerned. Unity, therefore, is desired as beneficial for all members, so that they maintain a permanent co-operation; while the only hegemony of the United Kingdom is neither political nor legal, but the natural moral hegemony of a metropolitan centre.

This does not prevent the presence of factors undermining the complete cohesion of the Commonwealth and capable of troubling the process of consolidation. There may come a time, maybe in the far future, when Canada or South Africa will break away through the very force of the progressive development of peoples that have attained their full maturity. The separation of Ireland as desired by the Republicans is less probable, because of the proximity and mutual political and economic dependence of Ireland and Great Britain. Whatever happens—and the life of nations is subject to the vicissitudes of existence like all life on this earth—it is certain that the British Commonwealth, as a permanent and free league of

States, represents a unique type of a lofty and human tenour, and as a Community of States, a special form of international organization on a wholly pacific basis.

We say "as a Community of States on a wholly pacific basis", for in its relations with the political world outside, each State of the Commonwealth, and Great Britain in particular, can pursue its own policy like any other State, and this policy may now be pacific, now warlike. And for this reason Great Britain, together with the Dominions, belongs to the League, and has accepted its ties and responsibilities.

For this reason the problem of the organization of the International Community to-day—notwithstanding the two other league-centres, the Pan-American Union and the British Commonwealth—gravitates round the League as the moral and political centre of unification. And although the various league-systems are based on the concept of independent States co-operating internationally, the tie of interdependence is becoming manifest as one of the laws of evolution of the International Community, and as an increasingly sensible product of the solidarity between people and people.

This principle of respect for the independence of the State, accompanied by recognition of international interdependence, has inspired the Kellogg Pact, signed by the promoting States in Paris on August 27, 1928, and to which almost all the States of the world, including Russia, have already adhered. This is a pact of a special character, concerned only with the right of war, and we shall have occasion to discuss it in due course. It does not aim at setting up an international society, but rather the reverse, in the sense that any kind of authority or representative body is avoided, or any legal sanction or bond that is outside or collateral to the Pact itself. But in its moral meaning the Pact is an affirmation of *international interdependence*, and is, so far, the most comprehensive, since it includes nearly the whole world; while in its general intention, that of outlawing war, it is the most important that has yet been signed, and that which most responds to the laws of humanity.

CHAPTER IV

CRITICAL FACTORS AND MODERN TENDENCIES

§ 17. While the League of Nations, on the one hand, and the Pan-American Union and the British Commonwealth, on the other, have many elements in common, they differ on an essential point. For whereas the constitution of the League provides for coercive measures against Member States, and has thus in certain determined cases a power of its own, the other two exclude any real exercise of power of coercion. Indeed the Covenant itself is a contract with the force of law, determining a social bond and guaranteeing its respect, providing for the case of the treaty-breaking State, and establishing the measures to be taken against it. It is therefore correct to say that the League constitutes a power, entitled to use coercive measures, whereas the Statutes of the other two unions of States, while providing for a friendly, arbitral, or judicial settlement, of any disputes between the component States, apply no coercion and implicitly rule out any exercise of authority.

The Covenant of the League, moreover, in the appointment of Members of the Council, recognizes the actual disparity between the various States, whereas in the other two unions the principle of equality has either been rigidly maintained from the beginning, as in Pan-America, or has been recently won and formulated, as in the British Commonwealth.

Against the background of international co-operation these differences may seem negligible, or, at the most, more or less outstanding signs of the interdependence of the States. But, on closer examination, these differences prove that among the civilized States there are various degrees of political evolution, the result of special causes and historical conditions that can easily be traced. Hence certain peoples are able to organize internationally without the need either for a permanent armed defence or for legal constraint to ensure the observance of the

pacts between them. This may indicate that internationally their collective consciousness has become effectively and practically sensible of the solidarity of their moral and material interests, as in the British Commonwealth, or else that their union represents a phase of general and not strictly political interests, as in Pan-America.

It is well, however, to note how this diversity has arisen from the distinct and characteristic origins of these three interstatal organizations. The British Commonwealth has reached the stage of free co-operation between autonomous States by the gradual liberation of what yesterday were crown colonies, or subject-dominions, or even incorporated with the United Kingdom. As little by little these States have achieved political personality they have grown out of outward subjection to the Mother Country, and hence, having come of age, have become partners in the Imperial firm. Needless to say that, save in India, the Anglo-Saxon race is either numerically or morally predominant throughout the British Commonwealth, forming a spiritual framework of the highest importance in the midst of the diversity of other races.

The Americas, too, were once colonies and subject to Europe. In defence against any residuum of subjection and any possible interference on the part of the States from which they sprang, the American States have instinctively fostered the principle of absolute independence, together with a sense of co-operation and solidarity amongst themselves. Hence both the Monroe Doctrine of 1823 and Bolivar's attempt to form a perpetual Confederation of American States in 1826, and if the latter failed to materialize, it left its trace; for in spite of the fundamental dualism between North and South it represented a tendency of which the present organization is the outcome. This organization is inspired by the same spirit of a jealous defence of the independence of each State, even with regard to the United States which represent a strong and powerful mass naturally tempted to exercise a hegemony at the expense of the rest. That such fear is not groundless is plain from the

policy of the United States with regard to the States of Central and South America.

The League of Nations, on the contrary, arose after the Great War and under the influence of the war. Its promoters sought by means of such a league to wipe out the tragic traces of the war, and to form a network of interstatal solidarity that would bring together, as far as possible, and with guarantees for the future, victors and vanquished. By the Peace Treaties new States had been born, and old suppressed States, such as Poland, brought to life. The political map of the Near East, with all its diversity of peoples and races and conflicting interests had been changed. It was, therefore, natural to resort to a minimum of legal bonds and authoritative constraint in order to overcome the natural disputes that might arise, or to settle them by peaceable means, and to establish an effective and, in so far as possible, permanent international order. We are witnessing the first definite and concrete beginnings of interstatal organization, which accordingly feel all the weakness and uncertainty, theoretical and practical, that accompany any great transformation, and which bring with them the qualities and defects of the past from which they come. No wonder if the tendencies to-day at work about these immense international novelties extend from an utter denial of the possibility of any true interstatal society to the assertion that the League of Nations can and must become a super-State. The interplay of these tendencies with the ideological and practical currents that may develop both in the international field proper and in the ambit of each State will give their stamp to the policy of the world.

To-day the most vital question to the various international currents is the possibility of practical co-operation between the League of Nations and America. The divergence of views as to the type of international organization is connected, as we shall see, with the problem of war and its eliminability. The idea has grown up in American public opinion that the League of Nations not only fails to eliminate war as a public institution

—which is true in certain cases—but that it fails because it is a league on a politico-military basis, its action ultimately resolving itself into war. America, on the contrary, would form an international union on a purely legal basis, with exclusively legal commitments, and no form of authority or compelling power. Law would be embodied in an international code approved by the various States and by a Court which would pronounce judicially on all disputes of a strictly international nature. The respect of such a legal Covenant, with its Code and Court, would be left only to the good faith and good will of the States.

These leading ideas are not really expressed in the Pan-American Union, which is as yet not fully developed in its organization, but they may form its background of premises and aspirations: and they gave rise to the Kellogg Pact.

On the other hand, the Member States of the League of Nations have an indelible military and political history, the Great War is of yesterday, and the Peace Treaties have not rendered the settlement of Europe morally final. Hence the hybrid conception of the League, and its need for a formal and outward rigidity comparable to the rigidity attributed to the Peace Treaties in which the Covenant appeared. At first this helped to safeguard its existence, undermined as it was by various conflicting factors, national and international, and by considerable practical difficulties.

But the very necessity of saving the existence of the Covenant and of the League itself render necessary the adaptations and even substantial changes that will increase its efficiency and bring it into just relations with the evolution of the International Community.

The two different conceptions of international organization operate on divergent but so far not conflicting planes. They will continue to co-exist, and will play their part in the formation of an international conscience. In substance, both seek to bring about the subsistence of law independently of force in the international field. It remains to be seen which will bear

the best fruit. Certainly, in spite of differences of situation and history, both are faced by considerable practical difficulties. But we can well assert to-day what will be reasserted better still to-morrow—that each in its own way helps to promote a restatement of ideas and a revision of theories which, it may be, will not remain barren. Indeed, each tends towards a systematization of law in the international field as far as possible objective and self-contained, towards the estimation of law by expert legal bodies as far as possible independent, and towards the organic enforcement of law by international machinery and not left to the discretion or will of each single State.

It is clear that all this is a tendency and not a fact; but a fact is never even approximately achieved save through the growth of tendencies and the friction of opposition. An ideal able to influence practical life does not fail with the failure of a determined type of society.

§ 18. One of the most noteworthy consequences of this new legal consciousness, and of the creation of the League of Nations and the other interstatal organizations, is to be seen in the idea and significance of the State, and it is interesting to note the contrast of light and shade that has grown up around it. Indeed, as we have already seen, both historically and in the prevailing theory of to-day, the State is presented as the sole fount of law, national and international. But, by the necessary contradiction of events, in the presence of the new international organisms both the historical and juridical conceptions lose their consistency at the very moment when in the Covenants and Statutes of association they are presumed or reaffirmed.

It is well to study this apparent enigma. Indeed, according to the legal principles underlying the League of Nations, and according to common interpretation, a State in joining the League, and in accepting its rules and conventions, and assuming its obligations, performs a purely voluntary act of self-limitation, of the same legal nature though with a wider

scope as the making of a treaty or convention with another State. The acts of the representatives of the League are binding on all States only when unanimously accepted, and even then they need the ratification of the legislative organs of each separate State.

At first sight this theory would seem to confirm the old principle of the sovereign State as it has been handed down from absolutist times, but this idea is excluded even by the most rigorous of State-worshipping jurists, who declare that one can no longer speak of the sovereignty of the State in connection with the international system. Indeed, the two concepts of sovereignty and limitation, even self-limitation, are incompatible, and still more so if the principle of State interdependence is accepted, as it must be. In any case, even with the modern theory of the State, many writers justly deny juridical value to the conception of sovereignty, be it royal or popular. Both are political conceptions unable to stand the criticism of the facts and the progressive change in the features of the State. To-day no one attributes absolute power either to King or People; while the will of either, however expressed, does not in itself constitute law, nor indiscriminate power, nor unlimited force of compulsion. It must be recognized that every public power is morally, legally, and politically limited by the nature of human personality and by man's social relationships. Thus one can say that the anti-human myth of the sovereignty of King or People is to-day wholly, or nearly wholly, of the past.

The traditionalist jurists hold fast, on the other hand, to the idea of State independence, even though corrected by the idea of interdependence. They define the concrete fact of the social ties of a State by the principle of self-limitation, introducing, as a legal institution, the obligation of a State towards others, or towards the society of States. For the American jurists this system, made to exclude any form of authority, is the type of international democracy.

But here it is necessary to draw a distinction. If this system

taken as a whole is considered as a political and legal means of expressing the common will of various States in view of some political or legal end within the international organization, its value, both psychologically and politically, may be great. But if it is considered otherwise than as a practical method, if it is expected to maintain to the State its autonomous, independent aspect, intact and undisputed, as in the sovereign State of yesterday, deemed sovereign even to-day, it would amount to a denial both of any practical interdependence and of the international organization that is its expression. In addition, it would set an a priori obstacle in that course of natural evolution proper to every living organism in virtue of its intrinsic dynamism. It would thus contradict the law of "sociality" to which we referred in Chapter II. By this law the international movement from the moment of its inception must continue to develop, acquiring an autonomous status both as a nexus of social relations and as power, law, and force. Nor is this in contradiction to the idea of international democracy, just as there has been no contradiction between the democratic form of the modern State and its present development.

Examining with attention the elements before us, we find first of all that the idea of an international law owing its existence to the will of the State cannot withstand even elementary criticism. It is, indeed, utterly impossible to assert that the general principles and traditional values of international law are the product of the will of the political State; one might as well maintain that the State had power to do away with them or deprive them of force. The State that would do so—by declaring, for instance, that treaties are "scraps of paper"—may be likened to the citizen that avenges a wrong by private vendetta and murder. Both are beyond the pale of law—that is, of the moral forces which law, either as custom or written law, has made the objective rule of social life. And what applies to general principles and traditional values, applies more and more to the principles and values gradually acquired by the progress of civilization. For civilization is nothing more than

the concrete application of these very principles, recognized and given greater profundity by the social conscience. Once it was thought lawful to condemn a vanquished people to deportation and perpetual slavery; to-day no civilized State would even dream of such an act, and this not by free and voluntary choice—in so far as freedom of choice is possible—but by the obligation of social life. Thus what was once optional or conventionary passes into custom; the legal formulation records the option or the convention but does not give its substance.

If any act of the State may be spoken of as voluntary—and the term is not very applicable—the word may be used with reference to the creation of particular and determined obligations *ex novo*, the voluntary nature of such acts varying, as in the case of individuals, between a margin of liberty and a margin of necessity. Yet, like all the acts of a society, these form part of a concatenation, and are themselves a result, presupposing political, legal, and historical antecedents which circumscribe the individual guiding or responsible wills. Now if all this is transported into the setting of a permanent international organization, it is clear that the mere existence of such a body makes the Member States become subject to a social law and a series of social reactions which they will not be able to evade, and which will give rise to a series of problems such as would otherwise never have arisen, or would have arisen in other terms and with other significance. The juridical results of this new social action—we are still considering the legal point of view—become objective reality, independently of the initial or subsequent will of the States, as a product of that public consciousness which grows up among individual men as their personality develops in social life.

The jurists who take refuge in the idea of an implicit or tacit will on the part of the States, carry Rousseau's error into the international field. That is, they believe in a free, initial contract, ever in existence and ever implicitly renewed, which may therefore be terminated. Both political society and the

International Community in general are necessary and not free, inasmuch as man is a social being, and therefore postulates relationships. Certain concrete forms of political organization, such as the constitutional States of modern times, and certain forms of international organization, such as the League of Nations, in a determined moment of history may be freely or relatively freely created. But apart from the complex of historical causes that has rendered their materialization possible, these organizations in reality express the whole or a part of that public consciousness which has reached maturity and can therefore take effect in these and other forms of society.

What is known as the will of the State, as emanating from the authority vested in the State, often reduces itself to the formal expression of objective obligations that all the combined wills of the people have helped to form in proportion to their respective efficacy in public life. Therefore the action of the legislator is more apparent than that of the elector, the effect of a pact more definite than that of a custom, and a bilateral contract more binding than a collective agreement.

It is strange that the philosophers and jurists who accept and defend the idea of a State will deny or ignore any international will. In reality, one should not speak of a public will, but only of individual wills translating public consciousness into act. This consciousness is translated into act by means of concrete social organization, in whatever form, and however frail, incipient, hesitant, and imperfect, for only so can the public will, or better, the public consciousness, find living expression.

It must, therefore, be recognized that the true fount of right and law is neither the State nor the International Community, whatever the stage of their social development, but human personality itself, both as individual and social, with its eternally evolving relations. Concrete societies are the means by which law materializes as an objective reality, and the more visible and effective such materialization, the more do such societies become concrete and individual.

Thus both the theory of the ethical State—the State as a substantial entity, sole fount of law, with no limits either moral or legal—and the theory of the State and society as based on voluntary contract are now out of date. That is our reason for asserting that a most important practical result of the existence of the various forms of international organization is the fact that they have a juridical expression of their own, thus modifying the conception of the State, even at a time like the present, when the State is made the source of all internal organic structure and of any effective significance of law.

§ 19. One of the reasons why the State is looked upon as the sole fount of law in the international field is the idea that power and force are inseparable and that both are essential to law. The trinomial "power-law-force" is so closely bound up with the State as to make it impossible for it to be transferred to any form of inter-State or super-State. Such a transfer would mean the transfer of the organization and use of force to other hands than those of the State, and this would resolve itself either into the annihilation of the State or its geographic and political expansion. The first alternative is unacceptable, whereas the second confirms the principle and is exemplified by the United States of America which, indeed, form a single, genuine political State.

The opinion that law cannot exist without force has already been opposed by many jurists, who consider that force is not a necessary postulate of law. This theory is already supported by a current of public opinion in America and also in Europe. We have seen that the historical process tends towards the independence of law from force and to the predominance of law over force. Doubtless, force is still an integrant factor in international relations, even, under present conditions, in the American continent. And although, as we saw in § 12, it is logical and legitimate to suppose the case of an internationalizing of public force, for to-day, and for a to-morrow of no brief duration, force remains in the hands of the State. We are

not speaking of the domestic use of force for police or judicial purposes, but of armed force as a State's guarantee against possible aggressions or disturbances on the part of other States or dissident groups of non-civilized peoples.

The organization of such armed force has always followed *pari passu* the development of the State. Once private, voluntary, organized as need arose, exercised by the Crown or by a caste, it has become public, compulsory, permanent, and national. The modern State is characterized by conscription, standing armies, and in general a wider participation of the public spirit in the organization of armies and armaments. The pride of a State, its power, its glory, have been bound up with the history and strength of its armies. While law has progressed by gaining in extension, becoming more organic, winning autonomy, force has progressed by entering within the sphere of law and at the same time becoming a public and national function.

Great Britain has never accepted the idea of conscription, but she has continually improved the organization of her forces, especially on sea and in the colonies, since there lie her chief interests and her greatest dangers. Even the United States of America had no sooner felt the need for expansion than their naval armaments rivalled those of Europe. Even neutral States had before the war and have now an army and a military organization. And States that have had no war for a century, like Sweden, Norway, and Denmark, or for more than a century, like Switzerland, even though they have no traces of warlike spirit, do not lack a military organization. In the States of South America, indeed, military organization is limited, but up to the present these States have had neither tendencies to expansion nor real fears for their security, although some of them have not lacked particular disputes or domestic revolutions.

But the force at the disposal of each State is limited in value and efficiency by the forces at the disposal of other States, and the armaments sought by each people are limited by their

demographic and economic conditions. The armed State seeks, first of all, to be self-sufficient, and, when this limit is reached, to impose a hegemony on others. Yet for the same reason other States seek the same ends, and thus the limit of force extends towards an instinctive balance of power, or towards the hegemonic dominion of one or more Powers. Such is the history of yesterday. Even in the sphere of armed force, the interdependence of the States asserts itself at the very moment when each State asserts an independence based on its own strength. Thus, even before the Great War, the problem of the limitation of armaments arose and affirmed itself in the public conscience and in the minds of statesmen. Balance of forces and limitation of armaments are two cognate problems, to-day inset in the fabric of the League of Nations as one of its aims. At the same time the Covenant establishes a theoretical limit to such limitation in the clause stipulating "the lowest point compatible with national safety". This clause refers to the other limit established in the Covenant beyond which a war might be deemed legitimate, even in the present league system; and, in the case of armed resistance to aggression, admitted in the spirit, and in the reservations of the Kellogg Pact.

Both before and since the constitution of the League of Nations, the regime governing the armed and organized force in the hands of a State or a State system—like the British Commonwealth or the United States—is in function of the right of war. The possible limits of reduction of armaments are correlated to the lowest possible margin allowed in law and, in fact, to the event of war. Indeed, the problem of armed force would not arise if the case of war were not presupposed. Moreover, so long as the right of war is legally recognized, so long will every State claim the right to maintain a proportionate armed force. Hence arises the problem whether such a proportion can be determined, and, if it is defined by agreement, whether it would be possible to establish an effective international control, giving birth to an efficient international social power.

All the measures connected with these problems, which form the subject of the studies and aims of the League of Nations, or of special Conferences among States outside the League, presuppose a principle, that of the international and public control of armaments. The post-war practice with regard to Germany and the other vanquished countries has an experimental value in spite of the fact that this control has been carried out under the rule of the treaty that followed the war. Not only the necessity but also the possibility of such control is entering into the public consciousness, and still more the first timid beginnings of recognition of the right that such control should be internationally imposed, at any rate in a restricted form. Such control will be ever more closely connected with the two international tendencies, the extension of the existing societies of States, and the progressive restriction and eventual elimination of the right of war. It is clear that the fact of the creation of a true organization of States, whether in the form of the Pan-American Union or the British Commonwealth, or in the wider and more comprehensive form of the League of Nations, and the fact of the establishment of the Permanent Court of International Justice, and ultimately the Kellogg Pact, have given international law in general and the right of war in particular a new basis, thus determining a more intense movement towards the better organization of the International Community.

PART II

WAR IN THE PRESENT INTERNATIONAL SYSTEM

CHAPTER V

THE NATURE OF WAR

§ 20. By war we understand *the right to settle a dispute between State and State by armed force*. This definition gives us a concept of war in relation to the present State and inter-State organization of civilized peoples. Only in an approximate manner can it be referred to the wars of other civilizations and other times, for war, like every human institution, assumes various forms and evolves in a various manner in different times and places. It varies as the type of society itself varies. The primitive nomadic nuclei became settled, the kin-group or tribe turned into the city and political community, the feudal system gave place to the State or Nation, and in the same way the type of armed struggle between people and people has changed, developed, and adapted itself to the evolution of society.

For this reason, whereas once the armed conflict between two families or two tribes received the name of war, to-day it would be designated by a more specific term, such as vendetta, feud, assault, street-fight, brigandage, or raid. Or else, when such disputes bear a semblance to war, we add a qualifying term and speak of a private war, family war, tribal war, civil war, colonial war, guerilla war, and so on, down to the savage or hunting war as practised in cannibal districts. The word "war", however, we reserve for what the old publicists called a "public war"—that is, a war between State and State.

We therefore consider war as a legal institution which has been modified by various ages and civilizations, but which has always been admitted among the relations between people and people as a legitimate means of settling a dispute. We therefore say that war is the "right" to settle a dispute between State and State by armed force; the concept of war is thus restricted to its function and aspect as a lawful institution.

But if we wish to consider war from the historical point of

view, apart from its legal aspect, we may define it simply as *the use and predominance of material force in the conflicts between the various human nuclei*. Here we avoid the word "right", both because we consider that the right of war followed and did not precede the practice of war, and because we consider it as a product of the evolution of society towards forms of civilization. For the same reason we use the words "material force" instead of "armed force", which we reserve for publicly organized force, and speak of "human nuclei" and not of States in order to embrace all forms of society, including the most rudimentary.

There are those who believe that the right to use material force to settle disputes between human nuclei is at least logically antecedent to the use of force, and never a consequent or posterior legal formation. This question may seem pedantic; it depends on the way the formation of law is understood. But it has a certain importance in the present question for those who consider the right of war to derive from natural law. Historically, there is no war without its elementary rules accepted by both parties of combatants. The predominance of the strongest is, so to speak, the rule of the game, but there is also another and very natural rule, that of the minimum means, and a third, necessarily bound up with the other two, the respect of pacts. With the practice of war, however, and consequent upon it, there arises a war custom, a species of inchoate and primitive law determining the norms for the conduct of war.

The formation of such norms arises more readily among social groups of similar origin inhabiting neighbouring territories than among heterogeneous groups whose first contact takes the form of a conquering inroad, like the invasion of the Northern barbarians, or those of the Mongols or Islamites, or of the Europeans in the New World. Among such hostile nuclei the norms of war grow up with the practice of war and are enforced by necessities which become translated into custom. Such, for example, are the suspension of hostilities for the

burial of the dead, truces with a view to possible understandings, and so on. Such uses, repeated by successive acts and observed in good faith and as a common advantage, become little by little stable and respected rules. The norms of war and peace with regard to the contacts between populations distinct and diverse by race, tongue, religion, politics, and economy, were consolidated by Greco-Roman civilization as the *jus gentium*.

But in the complex of norms forming this legal system of rights and duties there is no mention of the fundamental problem, whether and up to what point war constitutes a right. The "just" and "pious" war of the Romans meant a war carried on in accordance with the rules of the *jus gentium* (just) and religious rites (pious), both matters of outward form. The Church Fathers, in distinguishing between just and unjust war from the point of view of justice, laid the foundations of a right of war determined by an intrinsic morality. But the evolution of the idea of the right of war, in the sense in which we understand it to-day, is wholly modern. It does not mean simply the possession by the State—or by the political society in general —of the faculty or power to make war, but a legal institution, regulated by intrinsic laws, apart from those that are traditional or conventionary, external, formal, and directive.

This inwardness of the right of war has gained in profundity with the development of the idea of the State from the patrimonial State to the constitutional, with the ever-increasing part taken by the people in public life, and with the gradual evolution of the conception of public law from external formalism to the fundamental recognition of human personality as the fount of sociality and right. Nevertheless, the real formulation of the right and law of war was not reached till the International Community was conceived as an organization on a juridical basis.

§ 21. From the sociological point of view war may be considered as one of the aspects of human struggle. While peace is man's constant aspiration and his ever unfulfilled dream, his

actual life is a struggle in every sense, inward and outward, domestic and civic, with, in addition, the struggle of classes and interests, of peoples and races. Those who looked in the past or the future for a Reign of Saturn gave mythical and poetic expression to the perennial yearning for a peace that has never become an historical or sociological reality; in the same way, as in every age, there are those who, like certain Socialist and Communist dreamers, expect a final and peaceful systematization of society. The peace proclaimed by Christ was not an earthly or a social peace, but the peace of spirit of the just man, a foretaste of the heavenly kingdom He preached and promised. It does not rule out struggle, but rather intensifies it. In the same way the teachings of the Stoics and the various irenic philosophers went no farther than a subjective and individual peace; they did not and could not rule out external struggle. Struggle, however, taken in the widest sense, is a true law of life, of the whole cosmos, of all being. Man cannot evade it. And when this struggle assumes a social character, when it takes place between two or more human nuclei, when it is fought by the use of material force and decided by the predominance of force, then it contains the fundamental elements of war.

If war is one of the aspects of human struggle, it is natural to ask what subconscious necessity or what law of nature is responsible for the almost perennial fact that two or more nuclei have to resort to the use of force to settle their disputes. Is, then, the use of force—that is, the slaying of men and the destruction of goods—necessarily bound up with the instincts or laws of the human struggle? Sociologists and philosophers are not all agreed upon the answer. Some assert, others deny, the necessity of such a connection, not only with regard to war, but with regard to every other type of struggle in which it is usual to employ material force.

Apart from any particular theory, and basing ourselves on historical premises, we find evidence of two important tendencies in the life of peoples, carrying them forward in their arduous march to civilization. One is the tendency to *the*

regulation of the use of force in each community according to its particular type, and the other a tendency to *an increasing humanization or rationalization of the social struggle*. Coincident with the gradual development and improved organization of social life, the first tendency has led to the progressive withdrawal of the use of force from personal initiative and control and its transfer to specific social machinery, hedging it in with restrictions and safeguards, and making it proportionate and finally subordinate to social ends. It is true that there always have been and always will be cases of disturbance of the social order through exceptional causes, when the use of force by individuals or crowds has either been tolerated by the authorities or adopted in spite of them. Such cases, which include revolts, civil wars, and other social crises, are to be considered as symptoms of disturbance, phases of anarchy; they find their natural issue in a rearrangement of society, when the use of force returns to its place.

The second tendency, which we have identified as "the humanization or rationalization of the social struggle", is more general. The regulation of the use of force is one of the phases of its evolution. We say "humanization, or rationalization", to indicate the higher factors in human life, reason, morality, spirituality. By these the struggle, which we believe must always continue, is rendered ever less material and more rational. One might still better speak of the *Christianization* of the struggle, by which it tends to become ever more moral and better corresponding to the teachings of Christ.

Indeed, the whole effort of human civilization tends to transport the terms of the social struggle from the material to the moral plane, and hence to replace the use of force by more humane and rational methods, by such means as the development of social organization and law under the ægis of education and religion. Man's first animal instinct is to kill his adversary. Cain and Abel are its perennial and primitive symbol. Human history is streaked with blood, but at the first blood shed the moral conscience cries out against the slayer. Yet the adversary

is perennial, and is part of life itself. Not to destroy but to approach him, not to attack but to regulate relations with him by means of an inward and outward discipline, by the religious law and social law of individuals and collectivities—such has been rational humanity's magnificent effort to free itself from irrational instinct.

If we look back through history to the time of the most ancient monuments, we must agree that these two tendencies have shown themselves in every age and in every civilization, even if only leading from an elementary stage to one of greater complexity. They have been rendered more sensible by the influence of great events, such as Christianity, or by the vision of great men, philosophers, poets, and legislators. They may be traced even amid the ingenuous and primitive instincts of nomad and savage races. They have never been wholly absent.

War, although it is a phase in which animal instincts are no longer contained by social ties and are excited by the sanguinary nature of the struggle, has nevertheless always been affected by these two tendencies. Thus to-day we note that through the regulation of force within the social framework war is conceived of as a State right, and there is a tendency to diminish its likelihood, to limit its occurrence, and even, if possible, to do away with it altogether. And this represents an ever-increasing tendency to humanize and rationalize the struggle between people and people, between State and State, raising its tenor and its methods of settlement more and more, till the elimination of war is achieved.

§ 22. We shall see in our final section whether the tendency to humanize the social struggle can lead to the elimination of war. Here we seek to gain an exact idea of its nature and present significance. War from the sociological point of view, as one of the aspects of the social struggle, has tended to regulation and organization within a social system, and hence to form part of a juridical and moral system. We have already shown why we speak of war as a right (§ 20); here we will touch on the manner

in which it forms part of both the juridical and moral system.

We give the name "juridical system" to the complex of human institutions that have acquired concrete form and stability, forming customs and laws and expressing a series of correlative rights and duties. Every institution has a juridical significance of its own; the tissue of such institutions and their laws we call the juridical system. This varies with peoples or civilizations, but it contains natural elements common to all peoples, which express general needs or requirements constant in all times and in all places.

One of these constant elements common to all peoples is war, as a fact bound up with many others and as an institution to which is attributed definite and legal force, and as an institution with which many other institutions are connected or on which they depend. All peoples attribute a juridical value to the use of force, and all recognize the rights derived from the predominance of the strongest.

In attributing juridical value to an institution based on the right of the strongest one has the impression of asserting something repugnant to reason. Alas! not often does the juridical value of an institution coincide with its rationality. All barbaric customs, such as suttee or the slaying of crippled or defective children, have a juridical value inasmuch as they are customs rendered obligatory by laws or by religious or social prejudice. All juridical value postulates rationality, not only inasmuch as every law or custom is presumed rational, but inasmuch as it tends to an increasing rationality—that is, to the elimination of its irrational elements or to a rational interpretation.

We have spoken of the tendency to the rationalization of the social struggle, and hence of war. Here we add that there is a tendency to find a rational explanation for war, and hence for the right of the strongest. This explanation coincides with the search for the moral significance of war, for morality is nothing more than rationality applied to human actions. War is a human action, and hence to be moral it must be based on rational

motives. In so far as it is based on rational motives, even the juridical value attributed to the right of the strongest, and hence to war itself, may find explanation and support.

We have here reached the central point of the study of the nature of war. Philosophers and theologians recognize war as a moral fact, and hence morally lawful in its function and the methods it uses—the slaying of men and the destruction of goods—if and in so far as it has arisen out of a *state of necessity*. They admit that war in basing itself on the right of the strongest is irrational, but for them the right of the strongest is an effect experienced but not expressly sought by the parties concerned, since war originates in a state of necessity—that is, it comes about, or should come about, when all other means save armed struggle have proved inadequate to safeguard the rights of the State. Each of the two conflicting parties makes war or defends itself in the belief that this is its right and that the enabling state of necessity exists. Each believes that there is no other means in its power for settling the dispute, and each believes that only by means of war can it ensure the triumph of the justice of the cause for which it fights. If the right of the strongest is recognized as conclusive, this is because it marks the limits of the struggle, beyond which the vanquished party cannot go. It can never be taken as a rational proof that the vanquished was in the wrong and the victor in the right. It is true that both parties could reach a rational settlement of their dispute without recourse to war, but before the war the two opposing wills were of equal strength, and neither could decide the issue if voluntary agreement failed. Whereas after the issues of the war the will of the victor, precisely because it is the stronger, becomes conclusive, and constitutes the superior will. Thus the right of the strongest begins to function, acquiring at once a moral and a juridical value.

The psychologists start from an interesting standpoint. They say that the peoples or their leaders are more ready to seek the terms of settlement of a dispute after a war than before, because before the war they believe that their own

reasons are stronger and sounder than those of their adversaries, and that their forces are the greater, and hence that the probabilities of victory are in their favour. In this state of mind it is difficult to find a way of agreement—which always means a sacrifice—because the idea of justice is sentimentally united with that of force, and this gives rise to the psychology of the so-called "state of necessity". But when the victors have their dead and their losses, and the vanquished have, in addition, the sense of humiliation and defeat, the idea of justice is dissociated from that of force and a psychology of conciliation grows up, the stronger and the more deeply felt the wider the breach between the two sentiments. On the contrary, if even after the issue of a war the victors maintain the union of the ideas of justice and force, they tend to become oppressive, and if the vanquished maintain a similar union, they tend to seek peace or a truce in order to meditate their revenge. From this point of view morality does not reside objectively in war considered as a product of necessity, nor in the right of the strongest, but in the dissociation of the terms justice and force. The amorality of the war phase would seem to consist in this union of two unrelated terms, creating the figure of the right of the strongest. Whereas the morality of the post-war phase is determined by the extent to which the concept of justice is dissociated from that of force. The state of necessity pleaded by the moralists thus appears as a wholly subjective psychological product, manifesting itself in different degrees as much on one side as on the other.

Most moralists do not share this view, believing that the state of necessity can only exist for one side, and that for only one side can the war be just. Hence they believe that the exercise of force can be regarded as a sanction. Their reasoning is subtle but none the less interesting, for they claim that war based on just motives contains a moral *raison d'être*, not in so far as it entrusts the proof of right to the blind decision of the uncertain issues of armed conflict, but in so far as the fear that the injured party will resort to arms maintains a state of respect and disci-

pline among peoples or the leaders of peoples who would otherwise commit unjust and injurious acts. The fact that in spite of this, offences between State and State and hence wars continue to arise, is to be assimilated to the fact that in society, in spite of punitive justice, there is no lack of crime and criminals. For the moralists the concept of a sanction is inherent in the idea of war, in spite of the fact that war does not always achieve the punishment of guilt and the triumph of justice.

When we come to examine the theories of war, we will discuss these and other views upheld by moralists, philosophers, and jurists. Here we seek to detect the elements that have helped to form and define the present institution of the right of war. Unfortunately, at the bottom of the psychology of every people the idea of war is so closely bound up with that of justice and the defence of right that it cannot be conceived of separately. It will be easy to find false and exaggerated ideas of its own rights in the mentality of a people, and even the belief that one people has the right to thrust itself upon others and dominate them, as in the Imperialistic German idea of the chosen people, or that of the right to expansion or of historical rights dating back to the Roman Empire or the Empire of Charlemagne. Under the most fallacious aspects the two ideas of war and justice are maintained in union and mutually vivified.

Yet even after ridding ourselves of all such plainly irrational exaggerations, the jurists and moralists who would justify war hold fast to the fundamental concept of the *right of defence*, to-day more exactly and more comprehensively styled the *state of necessity*. Under this aspect war comes within the juridical system of the various peoples as a *right*, and within the moral system as a *lawful act*, and in certain cases even as a *duty*.

Those who consider war only from the political point of view, as a necessary means for the defence, development, and strengthening of the State, go beyond the juridico-moral sphere. For them the juridical system is identified with the political system, and hence they believe that war must be

considered from the political point of view of its *utility*. This manner of considering war coincides with the theory of the Reason of State, of which we shall speak when we come to it. It is to be noted, however, that the idea of utility also plays a part in the formation of the general consciousness, and is easily translated into the ideas and phraseology of the right and justice of war, so that it, too, forms part of the prevailing juridical system.

The affirmation bound up with the political idea of war—that is, that its lawfulness is derived from the State—may be considered merely the expression of a phase of juridical theory, which, if it is not already worn out and dead, is on the way to become so. To many, including ourselves, it would seem a contradiction to consider war apart from its place in the international juridical system, in the widest sense, and to consider it still chained to the conception of the so-called sovereign State. We have seen the reason for this in Part I. It is certain that the international juridical system, since it is in process of becoming, suffers the oscillation of any initial phase of organization, but inasmuch as it has laid down certain fundamental elements already acquired by civilized consciousness, it has become juridically concrete. Here we do not intend to consider the wars of past societies, but of the present, as affected by international political organization; inasmuch as war is an historical product of the relations between organized peoples.

CHAPTER VI

WARS OF TO-DAY

(*a*) Types. (*b*) Causes. (*c*) Responsibilities.

§ 23. The prevailing trend of the modern conscience in regard to war makes it insufficient to say that war is "the right to settle disputes between State and State by armed force". Better to render the idea of right, one must add "when no other adequate means exists", or, in legal terminology, "when a state of necessity arises". This conception is not new, but it has gained new vigour from the growing strength of the current in favour of a practical reduction in the possibilities of war. It is thus asserted, not as the corollary of any particular theory of international law, but as representing the general feeling among civilized peoples.

An accurate study of this delicate point of international law demands the preliminary consideration of whether and up to what point the general conditions of to-day admit of what is known as a "state of necessity" in the matter of war. To this end we propose in the present chapter to study the various types of the wars of to-day, with their causes and the responsibilities they involve.

By wars of to-day we refer not only to the Great War, and the subsequent Greco-Turkish, Russian, Moroccan, and Chinese wars, but to all the wars from the beginning of the second half of the XIXth century. For, in the first place, the present league system does not extend to all nations and has not yet stood the test of a serious international dispute; the structure of the modern State and its colonial system are still what they were in the XIXth century; and finally, because the causes of possible future wars are connected not only with the present but with the more recent past. Nevertheless, where our subject requires, we will distinguish between the periods before and after the Great War.

For our present purpose we may classify the wars of to-day as follows: (i) wars between civilized States; (ii) wars between subject minorities and the States to which they belong; (iii) wars between civilized States and colonial or quasi-colonial peoples. We do not include wars waged solely between barbarous and savage peoples, as these come outside the scope of the present study; whereas, if they lead to a dispute with a civilized State, they fall within the third class of war.

War between civilized States presupposes the juridical and political equality of the opposing parties—an equality achieved and recognized long before the creation of the League of Nations and which continues to be respected among Member States. Whatever dispute may arise, it cannot change this equality of status. We note this point, which is highly important from the juridical and political point of view, in order to establish a primary difference between wars waged by civilized States and wars of types (ii) and (iii), for in the first case both the two conflicting parties have a fully formed and responsible personality, and are agreed in a full and mutual recognition of rights and duties. Moreover, as we have already seen, they have their place in an international system, and are bound by pacts, alliances, treaties, conventions, and permanent diplomatic relations. If this was the case yesterday, before the existence of the League, it is still more the case to-day, for a series of well-defined political and juridical relationships have been created by the League. The same holds good for the States of the Pan-American Union, and still more for those adhering to the Kellogg Pact.

Now internal and international organization to-day render it impossible for irresponsible persons, acting apart from the will or influence of the powers of the State, to set on foot such incursions, raids, or invasions as figure in ancient, mediaeval, and a part of modern history as episodes or motives of war. The system of public organization is such as to enable the State to repress any irresponsible and independent move against other States. Even when such moves lead to disputes

in which the honour of the flag is involved, the State has the means of settling them without recourse to arms, amicably, diplomatically, or by arbitration, or in any other civilized manner. Hence in wars between civilized States there is no longer room for the unforeseen act of undisciplined and irresponsible elements outside the State. Any act of war comes within the sphere and faculties of the powers of the State, and the modern State, in virtue of its structure and the international system to which it belongs—whether that of yesterday or to-day —has acquired the power to use peaceful means for the settlement of any and every dispute.

Very different is the case of a war between a State and a part of that State, when for racial and national reasons a section of the population wishes to break away from the State, or to win a political position of its own within the framework of the State, or to revendicate a right. The most recent case in point is Ireland, but though the struggle with Great Britain reached the pitch of insurrection and harsh repression, a mutually profitable compromise was achieved before any recognition of the Irish as belligerents in the terms of international law. One of the most important wars of this type was the Civil War of the United States over the abolition of slavery. In such cases, in spite of the psychological and sometimes political difficulties in the way, it suits both sides in the dispute to reach a suitable agreement before the rebellion takes on the aspect of a war, and before either the State concerned or foreign States recognize the rebels as entitled to the status and rights of belligerents. The sense of the rights of minorities and the principle of nationality have won their place in international life, and for the last century have contributed to the political structure of Europe, forming such States as Greece, Italy, the Balkan States, then Poland, Czechoslovakia, Ireland, and others still.

For a population to resort to rebellion and war against the State of which it forms part, it must either have had to endure unusual oppression and tyranny or else have undergone a material conquest without ever losing its national and racial

personality. Nevertheless, the rebellions and wars of such peoples are often inset in vaster happenings, in the hope that the State, weakened by general disturbances, will be more ready to give way, or may more easily be forced to treat.

When the rebellion and consequent war is confined within the frontiers of the State, it hardly ever overflows the bounds of domestic politics. When instead it is grafted on to a vaster conflict, it comes within the category of wars between civilized States. This second case is the more prevalent.

Colonial wars, on the other hand, are on a different plane, being waged between populations that differ both in civilization and political organization. Such wars may be entered upon by a civilized State or States in order to maintain an already won dominion over colonial lands and peoples, and may be waged against rebellious populations who claim particular rights or autonomy, or against neighbouring peoples who threaten or disturb the existing dominion. Or again, such wars may be undertaken for the conquest of fresh territories and the subjection of primitive and savage peoples as yet independent.

In the same class as the colonial wars we may place those fought by civilized States against the Asiatic or African peoples with a political personality of their own, for the sake of particular commercial, territorial, or legal claims, or for the protection of compatriots working in such countries by the system of rights, privileges, and immunities, known as capitulations.

In all these cases there is no real juridical or political parity between the belligerents. More especially among the native peoples, but also on occasion among the dominant peoples, irresponsible elements play an especial part in bringing about war, while the responsible elements either have not sufficient strength to restrain them or make use of them for war ends.

Thus the practice of war is inherent in all phases of colonial dominion. First, in the original conquest, which is hardly ever achieved without war, even wars of extermination, such as those told of in the history of the conquest of the New World. Secondly, the maintenance and consolidation of dominion can-

not be achieved without wars of repression and police-wars, which often lead to an enlargement of territory, and hence fresh wars of conquest. Finally, when the colonial peoples have acquired self-consciousness and consciousness of their own personality, they seek to shake off the yoke of the dominant people; then come the wars of liberation, like the wars of North and South America and South Africa.

In the same way, States subjected to a capitulation regime or legal limitations and territorial occupation, like China and Egypt, or even Turkey up to the Treaty of Lausanne (1923), resort to war to free themselves when they think the hour has come to demand parity of rights with the civilized States with which they now share in international life.

Thus in the relations between civilized States and colonial or quasi-colonial peoples, the office of force predominates over that of law, and law hardly ever reaches autonomy save under the ægis of force. It is, therefore, difficult to transport the cases of colonial war into the framework of international law, and so long as such wars resolve themselves into a struggle between a dominant State and a subject people they remain, in the present system, matters of domestic policy. Only the concourse of several States with conflicting interests or divergent political views in colonial matters can turn them into wars between civilized States, when the colonial question becomes merely a cause of war, or even the object of war, but the real fighting is between the civilized States. In the same way a war between civilized States may arise out of disputes with capitulation States, when such States have acquired a complex position by means of treaties, alliances, or other ties, and when their weight counts in the balance of power, as in the case of Turkey both before and since the Great War.

In short, we may agree that both rebellions that degenerate into wars and colonial or similar wars are to-day considered as domestic events so long as they fail to resolve themselves into international questions and disturb neither the balance of power between the various States nor the League regime.

But the moment they react on the international field and show signs of forming causes of war between civilized States, they come within the true and real setting of what we may call the *wars of to-day*.

§ 24. So much settled, we will confine our research into war-causes to the relations between civilized States, with a view to defining their scope from the standpoint of the state of necessity.

The causes of war may be (*a*) remote, (*b*) proximate. We will deal with the remote causes first. The propriety of the word "cause" may be challenged, when referred to the factors and motives from which a war may take its origin, but since "cause" is the common term we use it, giving it a wide sense. We do not intend to give a list of such causes—to do so would necessitate a survey of the whole world and an indictment of the whole present system as a remote cause of war. Anything that creates differences, jealousies, friction, cupidity, disputes, between people and people may well be termed a remote war-cause. In every time and in every place remote war-causes, both general and particular, have existed, and will continue to exist as long as the world endures. The very lack of homogeneity in a people and the tendency towards becoming homogeneous is perpetually a remote cause of war.

Nevertheless, among civilized States the difference between past and present is marked by a highly important fact. To-day few, if any, wars find their causes in personal or dynastic desire for dominion, or in religious motives, while far more are determined by collective requirements. Such requirements are usually classified as *national*, *economic*, and *political*, according to which group of interests predominates; such interests, however, are never purely national, economic, or political, but always a mixture. Indeed, the economic interests, which generally predominate, do not present themselves openly, but often assume a national or political character and semblance. The same thing happened in the time of the dynastic and religious

wars; their fundamental reasons—questions of economy, of prosperity, or of independence—were masked by dynastic or religious interests. We say this, not to belittle the importance of moral sentiments among the various peoples, and racial and national feeling in particular, but to invest them with the complex significance of a reality which translates itself into political motives. Any material interest and any moral sentiment can become a remote war-cause if it is transported on to the political field of relations between State and State or between sections of one and the same State, but till then it remains ineffective and has no connection with war. When such interests and sentiments are transported on to the political field they may lead to war, but they cannot effectively determine war. That is why we say that remote causes are not true causes, but may be considered as necessary premises to the chapter of war. The outbreak of war is instead connected with those facts that we call proximate causes, and even these, as we shall see, are not true causes of war.

With regard, therefore, to the premises of war—which are not its causes—we may say that their effects and scope could be reduced by a better organization of the State and a better interstatal organization, so as to ensure the attenuation of the spirit of dominion by the spirit of co-operation, a greater respect and protection for the rights of national and religious minorities, and the end of the predominance of militarism and the system of secret diplomacy. Under this aspect the problem of remote war-causes is converted into the problem of the organization of the State and international organization, of which we have already spoken, and to which we will return. The remote war-causes are one with the perpetual and latent conflicts of humanity—between rich and poor, between powerful States and weak, between homogeneous peoples and heterogeneous, between dominant civilizations and backward ones. The whole question lies in how to provide more reasonable and less inhuman issues for the generic and general causes of dispute, and this resolves itself into the tendency we have already

noted—*the regulation of force and the rationalization of the human struggle* (§ 21).

The *proximate war-causes*. Any motive, or even any pretext, giving rise to war is to be set down as a proximate war-cause; these causes are therefore innumerable. The jurist considers them from the standpoint of the infringement of the law or the non-fulfilment of obligations, the moralist from that of the ethical relation between the war and its cause, the politician from that of the convenience and opportunity of turning them to war ends. Proximate causes mark the crucial points of the lives of peoples and of States, or rather they may come to do so. For when the will to war is absent, means can always be found to eliminate such so-called "proximate causes", whereas these come into action when the will to war intervenes. On the other hand, the essential motives of a war, what we called the "necessary premises to the chapter of war", are the remote causes, never the proximate ones. The latter, indeed, are accidental phenomena which exacerbate already existing disputes between civilized States and turn them into burning questions. They may consist in a violation of territory, or an insult to the flag, or mobilization along the frontiers, or a disputed possession, or the like. In themselves they are superficial, accidental motives, which, if the will to war is absent, can be glossed over by normal and peaceful means, such as explanations, understandings, or diplomatic apologies or arbitration, or mediation—all the methods which tend to render international relations humane and rational. But if the will to war is present—produced, maybe, from fear lest the adversary think it to his advantage to be the first to open hostilities—then the proximate war-causes provide the legitimate motive—apparent or genuine, no matter—for making war.

From the point of view of the facts, the relation between war and its causes in the present position of relationships between civilized States may be defined as follows: Remote causes provide the substance of the motives of a war, but never cause war. Proximate causes provide the legal and political pretext

for a war, but they are not its true causes. Thus there is no necessary and determinant connection between the motives or causes of a war and the war itself unless the human will to war intervenes.

The presence of war-causes, therefore, does not in itself create a state of necessity; the true intrinsic connection is wanting, and is created only by human will. The wars of to-day are unquestionably *voluntary* in character, while presenting themselves to the human mind as products of *necessity*. This is a most dangerous optical illusion which never fails to deceive, inasmuch as in a given moment it is believed that there is no other human means of settling the dispute, or that every peaceful means has been tried in vain, or that one may presume from the position of the moment that any peaceful means would prove useless or dangerous.

It is clear that a decision in favour of a war solution hinges on the fact that the machinery for war exists, and that war is presumed to be at once legitimate, useful, and necessary. And since the organization and machinery of modern States is built up on a permanent and scientific plane of armed organization, war is always expected, and hence when the moment comes it appears legitimate, useful, and necessary, and is willed as the one and only means.

In this interplay of real voluntariness and apparent necessity the fear of war is a most important factor. Some writers tend to give this feeling of fear a conclusive value, and belittling the voluntary factor, stress the necessity, even the fatality of war. Fear of aggression may become an obsession, and may exist either in the relations between a weak State and a strong, or in the mutual relations of two States of about equal strength. This state of fear, created and nourished by the natural distrust of one State for another, has its roots in what we called the remote war-causes. To counterbalance it treaties of alliance and armaments agreements are drawn up, but when the will to war is present everything favours its growth, just as when the will to war is absent any means serves to banish it. Even when the

feeling of fear is dominant, the factor of will remains its axis amid the concourse of causes and feelings which may bring two or more peoples into armed conflict. The *state of necessity* is not in itself an intrinsic war datum, and only as a legal fiction can it find place in the types of the wars of to-day. On the contrary, the wars of to-day are the product of a *state of volition*, or of "the will to war".

§ 25. The voluntary character of wars brings us back to the idea of responsibility for war.

The organization of the modern State tends to distribute the responsibilities of the political power over an ever-widening area of public activities; more and more it is becoming a vast and complicated mechanism in which personal responsibilities are very slight, and the resultant of personal activities is transported on to a synthetic plane. And since social life requires the recognition of definite and personal responsibility, in final analysis the complex resultant of public activities is practically expressed as the political responsibility of the Government. This is a consequence of the representative system. Political responsibility is presumed to rest with the men in the Government, whether they are to blame or no, whether or no they are the causes of the events in question. This is the sanction of the regime.

A rapid survey of the structure of the State makes this clear. The head of a constitutional State, whether King or President, is only indirectly responsible for policy, through the medium of the responsible Government. In practice his responsibility is merely formal. Within the limits of the Constitution he may dismiss the Cabinet and choose new Ministers, and if in this he fails to obtain the consent of the Parliamentary majority, he may appeal to the country. Thus the last word lies with the anonymous electorate. The Government, it is true, directs, but on the lines marked out by Parliament, and for practical administration it relies on the Civil Service, military authorities, police, and diplomatic corps. All these bodies have a personality,

tradition, mentality of their own; they have permanent requirements and a permanent significance over and above those of Governments, which are transitory, and, save in exceptional cases, formed of mediocrities.

Public opinion, as expressed by the Press, intellectual centres, political currents, economic groups, and local bodies, plays an important part in modern life. No Government can escape its influence, which may often lead to a change of Government or a change of general policy.

The complex whole of a modern State gives the idea of a wide co-operation of forces, developing simultaneously and successively. The community participates in various ways in public life, with the result that responsibilities are widely distributed over all, and the final act crowning a decision is often a quasi-necessary consequence of a chain of premises posited by others. Political life to-day may in certain respects be compared with a great factory, where the last man who sets up the finished machine can do no more than put together, in a necessary synthesis, the separate parts prepared by others. Doubtless the voluntary factor is never absent from any act emanating from a single individual, but the responsibility for the finished article is so bound up with its premises that it is difficult to transfer responsibility from the many to the one and from the one to the many. Hence the whole community should be held responsible, and this means that responsibility has given place to solidarity. The institution of a political responsibility to be borne by the Government follows as a natural consequence. Moral and legal responsibility for single actions can be easily traced, as when a man breaks a law or rule or moral law. The untrustworthy clerk or the dishonest politician answers for his actions in the dock. But the collective responsibility of Government, whether the errors involved are those of chiefs or of subordinates, is only political, and is paid for by loss of power, by the fall of monarchies, by revolutions, defeats, and dictatorships.

The responsibility for a war promoted or accepted by a State

is purely political. Whether the Government that declares war is to blame or no, it is politically responsible, inasmuch as it assumes all the responsibilities of the past, and all the responsibilities incurred by the political machinery of the State, public opinion, the diplomatic corps, the Civil Service, and the military authorities.

Indeed, if the responsibility for a war is connected with its so-called remote causes, it will easily be seen that this connection has been established by the fact of the war itself. In themselves neither the remote causes nor those responsible for them have any real and serious relation to the war. This may seem an exaggerated statement, but it is not. When Germany, having vanquished the France of Napoleon III, annexed Alsace-Lorraine by right of war, she sowed the seeds of future disputes. And in the same way France, having regained Alsace-Lorraine from Germany, by the Treaty of Versailles, has sown the seeds of a possible future dispute. The same might be said of all disputed zones of territory. But every position of to-day is linked up with a position of yesterday, and may be prolonged by chains of causation or dependence into the history of the distant future. To every fact of to-day might be attributed a series of responsibilities, such as would keep busy those historians who delight in similar arguments. These have no serious relationship to reality; they become realities only when a present situation recalls an historical dispute to life, so that for some reason, or under some aspect, it becomes again a question of the day. The responsibilities that may be politically traced are those creating or helping to create the present situation. They are nearly always confined to determined events and fail to constitute political war-responsibility save when war arises from these events. But even here we must note that just as there is no necessary connection between the so-called proximate causes and the ensuing war, there is no necessary connection between responsibility for acts that may become proximate war-causes and responsibility for war. Indeed, although the first event to actualize the motives of the Great

War was the Sarajevo assassination, no one can find any necessary connection between this and the war, nor seriously make either the bomb-throwers or their instigators (if their existence could be proved) responsible for the war. The dispute between Austria and Serbia could have been peaceably settled. Even the Russian mobilization, which is believed a proximate war-cause, would not have constituted a sufficient and necessary cause in the absence of the will to war; it could have given rise to other and peaceful measures, leading to the withdrawal on the part of Russia of those military orders which, while dictated by caution, had the appearance of a threat.

Therefore, as we have seen, war arises when there is the will to resort to war, and responsibility for war lies only in the will to make war. Historical responsibilities, the general or particular motives of dispute between the various peoples known as remote causes, merge themselves into all the acts of the political, economic, and national life of a people. The responsibility for events which may become proximate causes, or better, the occasions of war, stops short at the events themselves, so long as the direct will to make war does not arise with them or through them, or even beyond their range. Only when there is a will to war is there responsibility for war, for only then does war arise.

§ 26. We agree that the will to war does not arise outside the setting of remote or historical war-causes, nor outside that of the immediate events or proximate war-causes. The human will is not an extra-historical or extra-social abstraction, but the chief force in the materialization of all that stirs and evolves in society. The historical process is the process of human wills, of their mutual action and reaction. At a given moment war is deemed necessary or useful, or even useful and therefore necessary, and human wills, and human wills alone, make it a reality. They may act consciously or unconsciously; they may be morally, legally, or politically responsible, or not at all. All this does not matter. War is willed, because in the general

consciousness of the peoples it is a means that States employ for the settlement of their disputes. Anyhow, is not war believed a lawful institution, legitimate in use, possibly profitable in its results, with ever-existing causes which may be rendered actual, and an ever-ready organization? Human will works in a sphere of possibilities, moral, legal, political, theoretical, and practical, such that only the effectual and potent opposition of other wills can check it in time. But when such opposition is exercised only on the plane of material force—that is, when it consists in the balance of armaments—in practice it may prove ineffectual, and war is declared. Then small causes become great causes, and the puny wills of a few men become powerful levers acting on millions of conflicting wills, and the war psychology drives people against people, till blood and slaughter appear the most human and natural things possible.

If the present conditions of civilized States did not comprise an ever-ready military organization, carried to its highest war capacity, the will to war even when aroused would not have the means of becoming effective, or, at least, immediately effective. But when every nation is organized and prepared for war, like a brigand that carries his gun loaded and his knife in his pocket, it is unlikely that crucial moments of international dispute should fail to lead to war.

And yet, notwithstanding, there is no necessary connection even between the complex of moral and material war preparation and war itself, for a necessary relationship would imply an external and determinant causality over and above the wills of men, and this is not the case. Only it is hard to define the true and decisive will to war, for often unfortunately this is not a single arbitrary will, but is made up of a series of voluntary acts, each ineffective in itself to create a state of war, but which, taken together, succeed in doing so. The man or men on whom falls the formal decision and the declaration of war are often those who, while assuming all formal responsibility for the war, have neither desired nor willed nor directly prepared it.

For this reason political and legal responsibilities often

confuse themselves with moral responsibilities, and external responsibilities with the will to war, and the will to war with the political system, tradition, collective psychology, historical or remote causes, the military caste, the dynasty, economic interests, the race. We thus seek the reasons for acts of will in themselves inexplicable, so that our words are often void of sense.

As far as we are concerned, deterministic laws must be excluded, and, while admitting that the whole historic and social complex reacts on the wills of men, we recognize that these remain free. If they did not wish for war they would find adequate means in the present organization of the State to settle any and every dispute without recourse to war. We hold that war is willed socially, inasmuch as society demands the organization of the State on a war-basis; that it is willed individually, inasmuch as the decision as to war is made by individuals; that it is willed politically as regards its preparation; and that it is willed morally and responsibly as regards its actuation. In the present organization of the State there can be no necessary war, a nation cannot find itself in a state of necessity obliging it to make war, for there is a juridical system and a permanent system of interstatal relations by which every dispute could be peaceably settled.

From what we have hitherto said, we may conclude that, at any rate in the wars between civilized States—and also in wars between civilized States and their minorities, or between civilized States and colonial peoples, when they resolve themselves into wars between civilized States—there can never be a state of necessity entailing war.

We may here be asked whether it would not be well to return to the old distinction between wars of *aggression* and wars of *defence*, denying a state of necessity in the first instance and granting it in the second. It must be noted, however, that this distinction, though very natural, is very naïve. The distinction made by ourselves (§ 23) comes far closer to reality, when we divide wars into those determined by irresponsible elements

and those willed by the responsible rulers of a political society. And since under present conditions in civilized States the action of irresponsible elements can have no decisive part in determining war—save in the case of the rebellion of a national minority, which we have already studied—the type of the pure war of aggression does not occur. An aggressive act may be the occasion of a war—an act that might either lead to a peaceful settlement or to a formal declaration of war. In all cases of war between civilized States it is very hard to tell where aggression ends and defence begins. Warlike aggression might be defined legally, by common consent and on extrinsic data—that is, it might be isolated from the complex of human actions and reactions so as to seize its legal and formal elements. But this could only be achieved within the frame of an organization of States, either as the result of a special convention or of the principle of association. The practical difficulties are however considerable, for in the concrete the states of mind referable to aggression and to defence are often merged together, and the motives of war counterbalance. Permanent military organization is in itself a reciprocal threat. When armed conflict appears imminent and inevitable, the idea of gaining an advantage over the adversary may make the defending State take up the position of aggressor, and *vice versa*. The aggression is then a matter of tactics, not the cause of war.

Thus, to the question whether a State might find itself in a state of necessity compelling it to make war—that is, if it might be constrained willy-nilly to accept the armed settlement of a dispute—one could answer that, as an abstract hypothesis, this is possible. But the condition of the civilized States, the systematization of existing relations, makes it almost morally impossible for a State to be obliged against its will to make war with another State, to be reduced to a state of necessity compelling it to war.

The fact of war, therefore, is necessarily linked with the will of man alone. All the other links exist, but they do not entail necessity. This conclusion is contrary to the opinion of many,

but it springs limpid from our study of the question. Unfortunately, since the right of war forms part of the present juridical and moral systems, it is held to be a guarantee of the security of the various States, and the exercise of this right is organized in a permanent manner and with permanent means. Thus, in practice, war forms an integral part of State and international politics.

The endeavour, therefore, to reduce the occurrence of war, to forbid wars of aggression, and war as an instrument of national policy; to brand it as a crime, to limit armaments, to attenuate its effects, can only be achieved in and by an interstatal organization. Such is the present endeavour of the League of Nations, and, in its own sphere, of the Pan-American Union; and this, in its general character, is the aim of the Kellogg Pact.

CHAPTER VII

WAR AND THE LEAGUE OF NATIONS

§ 27. The League of Nations, as we have seen in § 15, is an attempt to organize international society, seeking, as set forth in the Preamble to the Covenant, to "promote international peace and security". These words, over and above their generic significance, have the historical significance of the moment of the signing of the Covenant—that is, after the greatest war in history. Therefore the whole effort, organizing, technical, and practical, of the League was directed to rendering interstatal relations peaceable and to facilitating the settlement of disputes without recourse to war. To this end the Covenant provides for a series of formal and compulsory acts of procedure to which the States are obliged to submit in the event of disputes. These methods are quite useful in themselves, although their result cannot be truly conclusive.

The first method indicated in the Covenant is purely prevenient. "The friendly right of each member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace", so that the League may take "any action that may be deemed wise and effectual to safeguard the peace of nations" (Art. 11). This method might appear a platonic *nota bene*, but it may also, if taken in time, be effectual in nipping in the bud any initial causes of friction between the States before they have had time to grow and become insoluble. There are those who doubt whether the League has the practical power to "take any action that may be deemed wise and effectual to safeguard the peace of nations", but any endeavour in this direction is always useful.

Of more direct efficacy is the engagement accepted by the Member States to resort to arbitration or judicial settlement in the two cases mentioned in Articles 12 and 13 of the Covenant,

viz. (i) "if there should arise between them any dispute likely to lead to a rupture" (Art. 12), and (ii) "whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or judicial settlement, and which cannot satisfactorily be settled by diplomacy". Article 13 is made clearer by the second clause, which specifies such disputes as "disputes as to the interpretation of a treaty, as to any question of international law". This is the first attempt to make arbitration the subject of a general pact, and to make it compulsory under certain circumstances—an attempt renewed by the institution of the Court of Justice (§ 14). There is, moreover, an important clause, that "in the event of any failure to carry out such an award or decision the Council shall propose what steps should be taken to give effect thereto" (Art. 13). Although the wording is general, it implies a real right of intervention and the exercise of a social authority, which undoubtedly will be further developed.

Here arbitration is an alternative. In the event of a dispute likely to lead to a rupture, if the States do not resort to arbitration or judicial settlement, they must submit their quarrel to the Council, or, if they prefer, to the Assembly of the League. They are then bound to accept its findings, when these represent either unanimity in the Council, or the requisite majority in the Assembly, in which the members of the Council must be agreed. The votes of the parties to the dispute are excluded in both cases (Art. 15).

During these proceedings and following the eventual awards, decisions, or reports, all attempt at war is *per se* illegitimate and a breach of treaty.

To crown these formal and procedural obligations and to render them effective, Article 16 declares that "should any member of the League resort to war in disregard of its covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, and to prohibit

all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not".

This very grave measure, a species of political and economic outlawry of the State in question and its nationals, has been attenuated by the decision of the Second Assembly, inasmuch as the obligation to sever all economic relations with the covenant-breaking State will not arise automatically through the fact of the declaration of war, but will require a decision on the part of the Council declaring that the Covenant has been broken, and notifying each separate State of the date for applying the measures of economic pressure of Article 16. Moreover, the Council may at the same time exempt any State from such an obligation in order to minimize the loss and inconvenience of the blockade. The same Assembly gave a restrictive interpretation to the provisions concerning nationals of the covenant-breaking State resident in other States. This interpretation aroused considerable criticism, for some writers believe that it is the implicit renunciation of a social right. In this they evidently go too far, for although practical and psychological difficulties have increased, the Council retains the faculty to order the integral application of Art. 16.

Finally, Article 17 provides for special procedure in the event of a dispute between a Member of the League and a non-Member State. If the non-Member State refuses the proposed procedure and resorts to war, it is deemed to have committed an act of war against all the Members of the League, and hence the Council may apply to it the sanctions of Article 16.

Without exaggerating the value of these measures of procedure and sanction, it must be recognized that they are capable of preventing many causes of war; while by the exercise of its functions the League cannot fail to acquire a force of its own as an organization and authority.

§ 28. From this complex of covenants and rules of procedure the cases of legally legitimate war under the present League system may be defined as follows:—

(*a*) A State may resort to war after arbitration, judicial settlement, the unanimous report of the Council, or the requisite majority in the Assembly, against the State or States failing to carry out the award, decision, or report (Arts. 13, 15), but only after the lapse of three months (Art. 12).

(*b*) A State may resort to war "if the Council fails to reach a report which is unanimously agreed to by the Members thereof", since by the Covenant in such case "the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice". This provision applies to the same case if the Assembly fails to reach the requisite majority (Art. 15). It is clear that this reservation means a recognition of the right of war.

(*c*) A State may resort to war when "the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party", for then "the Council shall so report, and shall make no recommendation as to its settlement". These words signify that if the party in question has no other means of vindicating its right it may resort to war.

In these three cases it is assumed that the dispute is between two or more Member States, or between a Member State and a State outside the League, but in this particular instance accepting its procedure. But another case may arise, when the States outside the League refuse to submit their dispute to the established procedure. In this case (*d*) the Member State may resort to war as indicated in case (*a*).

An important innovation in international law is the fact that in cases (*a*) and (*d*) there is no legal parity between the two parties in dispute, since the State refusing to carry out the decisions, awards, or reports of the League, and the State

refusing to submit its dispute to the League, are legally disqualified, held responsible for the war, and rendered liable to the sanctions provided for by Article 16 of the Covenant. In both these cases the illegitimacy of a war is established by the complex of procedure, apart from its motives; a social authority has the right to proclaim as it such. Therefore, as a result of extrinsic conditions, the two parties are so placed that one may be said to wage legitimate war, the other illegitimate war. On the other hand, in cases (*b*) and (*c*) we find the old figure of a war that from the extrinsic and social point of view is presumed to be legitimate for either side, whereas the lawfulness or unlawfulness of its motives for either side can be estimated only by the interested parties—that is, by the belligerent States themselves.

Over and above these considerations, one cannot fail to recognize in all four cases that the influence of the League is favourable to peace, both because there always remains a margin of moral activity by which recourse to arms may be avoided, and because by the publication of the reports of the Council or Assembly public opinion is enlightened as to the terms and reasons of the conflict. The States concerned, the States foreign to the dispute, and political currents in general, are thus placed in a better position for estimating the effects of eventual war, and this helps to lessen what we have called the war psychology. In any case, the whole procedure provides a means of avoiding the appearance of the so-called state of necessity—the lever by which a country is impelled up to war.

We must attribute great importance to this moral element, because insensibly, by general and more or less unconscious consent, the mere formal and procedural law becomes the basis for a species of historical and substantial law, marking an inward and vital trend towards peace, even when peace is unattainable and war inevitable. Even if according to law there are cases when war is legitimate, the conflict itself tends to become rationalized, both in its premises and in the sphere of the League.

Indeed, since the brief existence of the League of Nations, this kind of extra-procedural action for peace has been more developed, and while inherent in the very existence of the League, it has led to the formation of regional pacts, such as that of Locarno, and to other practical and useful initiatives. Indeed, it has seemed as if those chiefly responsible for the policy of the League had wished to anticipate, and thus avoid the need to enforce the procedural measures we have considered, for fear lest the trial by fire should prove their insufficiency, or lest they should drag the League into a conflict of which none could well tell the issue. For, in theory, a general war against the covenant-breaking States as such is not out of reckoning, since these might provoke a war constraining other States, and the League itself as a moral and legal corporate body, to reply by armed force.

For this reason, and with the aim of avoiding any war between civilized States, the General Protocol was drawn up in 1924. Though approved by the Assembly of the League, it has never been ratified by the States, and hence has not yet and may never have legal force. We speak of it, however, as a sign of the tendency to transport the moral conviction against war on to the legal plane. The whole effort of the Protocol is to preclude recourse to war, even in the cases in which, as we have seen, the present League regime admits war to be legitimate, and to define the figure of the aggressor against whom all sanctions, including military sanctions, would be applied. Thus a new type of war is created, the *judicial punitive war*.

In order to avert war in the four cases when it is deemed legitimate, the Protocol provides for a series of social measures hinging on compulsory arbitration. The procedure is rendered rather complicated by the attempt to provide as many guarantees and proofs of impartiality as possible, and to allow the States in dispute to choose the most opportune and satisfactory means for peaceful settlement. Hence the Protocol begins by stating (Art. 3) that "the signatory States undertake to recognize as compulsory *ipso facto* and without special agreement the

jurisdiction of the Permanent Court of International Justice, in the cases covered by paragraph 2 of Article 36 of the Statute of the Court". That is, they accept the so-called "Optional Clause".

With regard to the four above-mentioned cases of legitimate war, the Protocol disposes as follows:—

Cases (*a*) and (*d*), when the machinery of the League has failed to bring about a settlement, or when States outside the League refuse to admit its competence and resort to war. In these cases the precautionary measures are better defined, and the sanctions provided by Article 16 of the Covenant are interpreted so as to render them more serious and genuinely enforceable (Arts. 4, 6, and ff.).

Case (*b*), when the Council fails to reach a unanimous report. In this case the Council must submit the matter to a Committee of Arbitrators, of which it determines the composition, powers, and procedure, bearing in mind the prescribed guarantees of competence and impartiality (Art. 4, sections 2*b*, 4, 5).

Case (*c*), when the dispute is claimed by one of the parties to lie within its domestic jurisdiction. This claim is to be decided by the concerted action of an Arbitration Committee, the Council, and the Permanent Court of Justice; while, furthermore (Art. 5), any decision so obtained shall not prevent the Council or the Assembly from considering the question so as to avert war.

As we have seen, the Protocol is an amplification of the Covenant, tending still more towards making compulsory arbitration the ultimate peaceful means for the settlement of disputes, and towards a more wholehearted acceptance of the principle of sanctions for all cases when war is declared. As a legal consequence, there remains only one case in which war is legitimate—the war waged in concert with the League against compulsory procedure, decisions, awards, or reports, of the League. Thus the legal aspect of aggression becomes clear. Any State starting a war is an aggressor. Any State resisting in

concert with the League is the victim of aggression (Art. 10). When the aggression and resistance are simultaneous, and so sudden as to allow the League no time to intervene, the Protocol enjoins that the Council shall call upon the belligerents to declare an armistice in order that the dispute may be settled by peaceful procedure. The State refusing such an armistice is deemed an aggressor (Art. 10). Thus, according to the Protocol, the right of war is no longer the right of a State to settle a dispute by armed force, but the right of a State to resist armed aggression and the right of the League of Nations to apply sanctions against the aggressor State. But the Protocol is not a reality. It has not been ratified by the States, and thus has fallen through. It remains merely as a document marking the greatest effort made by the League Assembly to create a new right and law of war by a better organization of peace. And since no effort is wholly lost, the ideal behind the Protocol remains.

§ 29. The chief cause of the failure of the Geneva Protocol lies in the uneasy situation of Europe as a result of the Great War and the mistakes of the Peace Treaties. In spite of the creation of the League of Nations, the development of arbitration, and in particular of compulsory arbitration, and the efforts to provide a peaceful settlement for all disputes, there is a general fear of the outbreak of fresh war, of another Great War that would hurl Europe into the abyss. Indeed, the whole structure of the Protocol was based on the possibility of resistance to an aggressor—a resistance which would have to be effective, or the aggressor would emerge victorious and dictate his laws to the defending States—that is, to the League itself. Such an issue would be a large-scale repetition of what happened with Turkey, when, after the Greco-Turkish War, Turkey, as victor, was able to change the Treaty of Sèvres, which she had signed as vanquished, for the Treaty of Lausanne. Thus, in order to render the resistance to an aggressor State really effective, the Protocol carried the solidarity of all Member States to the

point of military action. It is clear that the greatest military contribution and the greatest responsibility in such case would be borne by the Great Powers, not, indeed, by unarmed Germany, but by Great Britain and France in the first place, and then by the States of less importance. And it was Great Britain that refused to ratify the Protocol, and up to the present Great Britain has shown herself consistently averse to its renewal in any other form. Probably the other Powers were of the same opinion, but did not wish to assume the responsibility of open opposition. Great Britain took her stand on the prevalent opinion of the Dominions, which was more or less contrary to any general undertaking to take part in eventual European wars, and on the fact that the United States of America, outside the League of Nations, would have stood aloof from the engagements of the Protocol, and might even fail to observe the sanctions of Article 16 of the Covenant.

But if this endeavour failed, its spirit and its structure were the foundations of the Locarno Treaty of October 1925, with the Rhine Pact as principal annex. The principles are identical —the renunciation of war, arbitration, guarantee—but bearing on a definite object, the Rhine frontier, and signed by the States concerned, Germany, Belgium, France, with Great Britain and Italy as guarantors. It was complemented by contemporary arbitral treaties between Germany, on the one hand, and Belgium, France, Poland, and Czechoslovakia, on the other. The fundamental point of the Rhine Pact is that "Germany, Belgium, and France bind themselves reciprocally not to have recourse to any attack or invasion on either bank (of the Rhine), and in no case to resort to war" (Art. 2). In the matter of recourse to war the following exceptions are admitted: (i) the case of lawful defence; (ii) the case of a flagrant violation of Articles 42 and 43 of the Treaty of Versailles (concerning fortifications and movements of troops on the Rhine); (iii) the case of an action carried out in enforcement of Articles 15 and 16 of the Covenant.

The first and second cases refer less to war proper than to

armed resistance or raids which might lead to war, but do not necessarily entail it. In themselves such acts, if they constituted flagrant breaches of treaty, or the opening of hostilities, or the mobilization of troops in the demilitarized zone, would entail merely the intervention of the guarantors after notification by the League of Nations. In these and other cases, if war is averted, the pacific and arbitral procedure as specified in the annexes of the Locarno Treaty come into force.

The importance of this Treaty lies in the fact that it establishes a regime of guarantees in the most disputed zone of Europe, the converging point of the disputes and suspicions of the two strongest and most consistently hostile States of continental Europe—France and Germany. Whether Locarno has fulfilled all the hopes placed in it, it is too soon to say, but from the point of view of the right and law of war it has certainly brought an addition to the new structure of peace. Such a treaty is a step forward, both as regards compulsory general arbitration and its establishment by convention, and the limitation of the admitted cases of war. Yet the Locarno Treaty is a particular pact, and in this falls outside the sphere of the League. This may give the impression of a return to the old system of guarantee pacts like the Treaty of 1829, that guaranteed Belgian neutrality, and which did not prevent the war of 1914. But Locarno has in its favour the fact that it is embedded in the League system, and the fact that it cannot remain a finished and final act, for, in virtue of what was called the "Locarno spirit", it postulates further actualization and extension, both of its own scope and of the system in general.

As regards the scope of the Locarno Treaty itself, the Eastern frontier between Germany and Poland still causes uneasiness. It is recognized that in the long run this systematization cannot prove final, but the spirit of Locarno demands that every case of dispute that may ensue shall be settled not by war but by arbitration. The declarations of the Foreign Minister of the Reich at the VIIIth Assembly of the League of Nations in 1927 are to be interpreted in this sense. With regard to the extension

of the system, the League itself has signified its approval in a resolution presented by the IIIrd Commission, and adopted by the Council in September 1927, recommending: "(1) The progressive extension of arbitration by means of special or collective agreements, including agreements between States Members and non-Members of the League", and to this end urging (2) that the work of the Preparatory Commission for the Reduction of Armaments should be hastened, and (3) that a new Committee should be created to make the preliminary studies with a view to arbitral agreements and the guarantees necessary between the various groups of States. All this has been called the extension of Locarno.

In order to understand the significance of these decisions it is well to recall that they are the results of a compromise between the representatives of States wishing for a return to the principle of the Protocol and those, like Great Britain, that opposed any revival of the Protocol. But it must be added that the idea of outlawing all war, or, as some have it, all war of aggression, and that of making arbitration compulsory for all Member States, has made considerable headway in public opinion, and even among the various Governments. The difficulty lies in the question of sanctions and practical guarantees in defence of attacked States, and thus the difficulty of the Protocol returns in its entirety. Hence the endeavour, on the one hand, to promote special pacts (regional, "Locarno" pacts), so as to define guarantees and responsibilities in case of aggression, and, on the other, to seek practical results in the preparatory work for the reduction of armaments. Nevertheless, the Assembly, at its session of December 24, 1927, passed a motion declaring that "all wars of aggression are, and shall always be, prohibited". It thus anticipated the declaration of the Pan-American Congress (February 1928) and the Kellogg Pact (August 1928).

The phase following the VIIIth and IXth Assemblies must, therefore, be called one of *Arbitration, Security, and Disarmament*. The extension of arbitration and security should be achieved by local agreements, and a new Committee has been

set up for this purpose, and has already passed standard treaties, while the limitation of armaments awaits the proposals of the competent Commission.

As we have pointed out, the limitation of armaments does not directly affect the legal status of war. Since in the present system cases of war may arise, such reductions can only take place within the real limits allowed by warlike requirements. An important consequence will be that of avoiding the race of armaments, which in itself has the effect of arousing a military spirit and may become the motive of a war, even after long lapse of time.

§ 30. The United States, Russia, and all the other States outside the League of Nations, as regards the strictly legal aspect of the right of war, found themselves, until the signing of the Kellogg Pact, in the same position as the other States before the Great War—that is, they were bound only by treaties, and held that the State must be free and sole judge in accepting or declaring war. But this theoretical standpoint still felt the influence of the practice of the League system. The limitation of the right of war among a considerable number of States limits the possibilities of war among States outside the League.

The American States, moreover, belong to another system, the Pan-American Union, which, as we have already said, has proclaimed as illegal and prohibited all wars of aggression, and has laid down that the American States must employ pacific means for the solution of possible conflicts (Havana, February 1928). In the past, on the part of the United States, America has seen both active wars and military interventions. Since the famous instances of Cuba and the Philippines, the American troops have twice entered Mexico, six times Honduras, once Costa Rica and Colombia, and are actually in Nicaragua. Undoubtedly the cases of disturbance in the Central Republics, and in some of those of the South, where there is no lack of rebellions, civil wars, military coups, brigand incursions, and administrative and financial disorder demand suitable measures

for the safeguarding of general interests. However, at the VIth Pan-American Conference in Havana, the current hostile to all intervention by one State in another showed itself to be very strong. At this Conference what in the international field is known as the "American spirit" showed itself still more plainly, with its tendency to outlaw all war, either by a provision in the international code (which is in course of formation) or by interstatal conventions.

It is certain that to-day the United States are the point of convergence and divergence in regard to all the rest of the world system, in virtue of their twofold attitude of an intellectual opposition to all war combined with a development of their potentialities, economic, political, and naval, beyond all mean and measure in the direction of hegemony.

The position of Russia in regard to the rest of the civilized world is not clear, by reason of her self-contained political and economic system, based on the communist dictatorship, and of her method of intrigues in the international field. At bottom, every revolution has, willy-nilly, to defend itself from foreign pressure by war, and at home must consolidate itself by a despotism which, if it meets with armed resistance, may also lead to reprisals and civil war. Against this background Russia's proposal to the Geneva Commission for general disarmament might have the character either of political propaganda or of the affirmation of antithesis to a League of Nations considered as the international orbit of bourgeois and militarist States. Nevertheless, its significance should not be ignored.

The British Commonwealth, from the point of view of war, must be considered as a mixture between a closed system of federated States, such as the United States of America, and a permanent moral alliance between independent States. Internal war is, therefore, not considered as a working hypothesis, and if beyond all hypotheses it were to arise it would be neither a civil nor a colonial war, but a war between free and independent States to be regulated by the norms of the League of Nations, as it would be based on the separation of a State from

the Commonwealth. If the British Commonwealth is considered in relation to other States, it comes within the orbit of the League; it is a Member of the League, and has agreed to its war regime. This war regime, therefore, remains in the terms of the original Covenant, with its various successive interpretations and applications. As such it is binding on all Member States in relations with one another and with non-Member States, whereas these last can only be obliged to follow the procedure of the Covenant when their disputes are with Member States.

Civil wars, revolts, the vindication of national rights, and colonial wars also come outside the sphere of the League so long as they do not resolve themselves into disputes between civilized States. In such cases Article 15 of the Covenant may be applied and the intervention of the League refused in matters lying within the domestic jurisdiction of a State.

Finally, for all States the right and law of war, in the strict sense of the word, remains active—that is, the complex of customs and conventions regulating the use of war, the breach of which constitutes an international crime. This complex is divided into written law and customary law, the latter a derivation from the Law of Nations. The written law finds its chief source in the Hague Conventions of 1899 and 1907. Since the Great War various other conventions have been added, such as the Washington Convention of 1922 against the use of poison gases, and the Geneva Declaration of 1925 against bacteriological warfare. These conventions seek to render the effects of wars less inhuman and less tragic, and certainly the war customs of to-day, especially with regard to the treatment of the wounded, prisoners, and civil populations, show an advance on the old-time rights of enslavement, the destruction of cities, and the wholesale slaughter of non-combatants. Yet one must note that with the progress of science the methods of slaughter and destruction have grown far more terrible and effective. Moreover, in spite of conventions, in the last war, and probably in all wars, the rules of the law of war were not always

observed by either side. Unfortunately, an international Court of Criminal Justice not only does not exist, but it is unlikely and practically impossible that it ever should exist. The prerogative of each State to try its own soldiers is too jealously guarded, the number of the accused would be too vast, and also such a court would arouse a psychological excitement in every people at the close of war, at the very moment when a spirit of appeasement and mutual forgiveness was most needed.

The other war conventions and customs concerning the opening of hostilities, the occupation of territories, blockades, neutral commerce, booty, war indemnities, consist either of formalities and guarantees of relations between belligerents, or of the regulation of the economic interests of third parties or private individuals. There is a whole code of law and jurisprudence to regulate what war disturbs, to mend what war destroys, and in these customs and conventions much human wisdom is stored, so that they tend always in the direction of moral and juridical progress and of an increased respect of individuals in their persons and their goods.

§ 31. To the post-war international fabric which we have hitherto examined has recently been added the Kellogg Pact, or, as it is also named, the Briand-Kellogg Pact, or the Paris Peace Pact. By this Pact the contracting States solemnly declare, in the names of their respective peoples, "that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of international policy in their relations with one another" (Art. 1); and that "they agree that the settlement or solution of all disputes or conflicts of whatever nature or whatever origin they may be, which may arise among them, shall never be sought except by pacific means" (Art. 2).

This Pact, signed in Paris on August 27, 1928, by the representatives of fourteen States—among them, five British dominions—has been agreed to by almost all the States of the world, including the Union of Soviet Republics; the

Argentine and Brazil, with a few others, are still missing. The signing was preceded by the making of reservations and declarations on the part of the signatories, reservations which were renewed and added to, in their turn, by other States in giving their adhesion. To the reservations made by France, which had drawn up a counter-project (alternative draft treaty), Mr. Kellogg replied in his speech of April 28, 1928, which was communicated to the signatory powers.

The reservations agreed upon as the *mens* of the treaty concern: (i) the right to self-defence on the part of every State; (ii) the bearing of the Pact on the engagements arising out of the Covenant of the League of Nations and out of the Locarno Treaty; and (iii) the release from the obligation of observing the terms of the Pact in respect of any State that should have recourse to war.

Great Britain, in its reply of May 19, 1928, made a special reservation in the following terms: "The language of Article 1, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your Excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests, any disregard of which by a foreign Power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government."

This reservation was not touched upon in the conversations between the various States, and was only explicitly contested

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by the Soviet Government in the declaration appended to its adhesion to the Kellogg Pact. The obvious allusion made by Great Britain to the Monroe Doctrine, as though an analogous reservation existed on the part of the United States, has no foundation in fact. The British Government had merely seized the occasion to formulate and proclaim its own "Monroe Doctrine".

We will now examine the bearing of the Kellogg Pact upon the problem of war from the standpoint of its own juridical system, and consequently in relation to the systems of the League of Nations and the Pan-American Union.

It is superfluous to point out that this Pact is of enormous moral value, inasmuch as it is a comprehensive condemnation of all war, and manifests the explicit desire of the nations to resolve every dispute arising among them by pacific means alone. From this point of view the Kellogg Pact is of greater value than the Covenant of the League of Nations. Nevertheless, while the moral consequence of the Pact is that war in general is no longer recognized as a legitimate means of resolving disputes, and that therefore pacific means alone must be employed for the settlement of such differences, its juridical meaning, and the strictly contractual obligations imposed upon the States concerned, would seem to be limited to war as "an instrument of national policy". The meaning of this phrase is not clear, for, according to the point of view of either side, any war may or may not be considered as "an instrument of national policy".

Taking the articles as a whole, and excepting the special reservation made by Great Britain, the Kellogg Pact might be interpreted as designating all wars, save those of "self-defence", as "instruments of national policy". But the question becomes an extremely complex one, because the objective elements necessary for distinguishing between the two classes of war are lacking. We have seen, in examining the types of modern war (Chapter VI), and in seeking to analyse what the jurists term a "state of necessity", how the conclusion was forced upon us

that civilized States to-day are never really in a true "state of necessity", one, that is, to warrant the recourse to war as a means of legitimate self-defence. The attempt to occupy or invade with armed forces a part of the territory of any State certainly creates the right to resist; but this is not, in itself, war; it is a condition which may lead to war, as it may, equally, lead to a pacific solution. The case of the occupation of Corfu by Italy in 1923 was settled by the Conference of Ambassadors, and thus a Greco-Italian war was avoided.

Moreover, the distinction between wars of self-defence and war as an instrument of national policy does not hold good in respect to Article 2 of the Pact itself, by which any conflict between States "of whatever nature or of whatever origin" must be settled by pacific means alone. A dispute might arise from an occupation or an armed invasion, and yet might still be settled without recourse to war.

The truth is that neither the United States nor the other States concerned were willing to have recourse to the term "wars of aggression", a term already admitted in theory by the Assembly of the League of Nations (September 24, 1927), and by the Assembly of the Pan-American Union (February 18, 1928); because, as we have seen in studying the Geneva Protocol (§ 28), a war of aggression can only be established as such on a basis of formal and strictly legal data, previously agreed upon by the various States, and within the framework of some kind of international organization. To avoid this, for the United States do not wish to bind themselves in any league with Europe, there was no other way save the simple and logical one of "the renunciation of all wars, and the obligation to adopt only pacific means in the solution of disputes of whatever origin or nature".

But it was not intended to go quite as far as this, nor would it have been possible to do so, without accepting all the logical consequences, among others, that of the adherence of the United States to the Permanent Court of International Justice, or the formation of another Court of International Justice; and

of effective general disarmament, combined with the creation of an international police.

The defect of the Pact lies in the *individualist* rather than *organic and associative* conception of international co-operation; for this reason, its undoubtedly great moral value does not find a correspondingly complete and effective juridical value. The promoters were forced, therefore, to content themselves with renouncing war as "an instrument of national policy".

The Kellogg Pact, therefore, contains no sanctions, saving, of course, the implicit understanding that violation of the undertaking by one State would automatically free the remaining parties from the obligation to observe its terms. Mr. Kellogg rightly declared a clause to this effect, which was demanded by the French Government, in an excess of juridical formalism, to be unnecessary. It is to be observed that, given the individualistic type of pact, no kind of solidarity is established between the contracting States against the treaty-breaking State; in such a case, each State will act as it thinks to its best interest.

The fact that the Kellogg Pact establishes no special sanction, nor any solidarity between the contracting States, does not mean, as some may think, that it is binding only morally and not legally. There is real juridical obligation in Article 1, in the word "renounce", and in the word "agree" in Article 2; while the automatic release from the obligations of the Pact is as much juridical in its effect as moral. All the same, since the Pact provides for no form of higher power able to establish the rights and wrongs of a dispute, and no system of interstatal solidarity in favour of those who are in the right and against those who are in the wrong, it is evident that on its face value it can have no juridical force but only moral force.

Fortunately, the Kellogg Pact cannot be regarded in itself as isolated in time and space; it must be taken in relation to the Covenant of the League of Nations and to the Pan-American Union. It is true that in the Kellogg Pact no reference is made to these international organizations, but, apart from the reservations made by the various States, they exist with the

aim of the elimination, as far as possible, of war. In entering into the framework of these organizations, the Kellogg Pact acquires all the juridical, and even political, value that in itself it cannot possess. Were this not so, one would be forced to the conclusion that it had opened the door to war even wider than in the period before August 1928, since it would have left to each individual State the complete and undisputed right to decide whether a war were one of self-defence or not, and would have broken up any international solidarity in the face of a treaty-breaking State, leaving the State attacked to deal alone with its aggressor. The consequences of this "individualistic" system, as outside any international organization, would have been disastrous, since it would have meant a return to the system of security based upon armaments and armies, to a system of offensive and defensive alliances between the various States, and therefore to that of the balance of power; in a word, a return to conditions similar to those preceding the Great War. From this point of view the Soviet Government had reason on its side in observing, in its notification of adherence, that the Kellogg Pact without proposals for general disarmament would have no real efficacy. But the voice of Russia is suspect, even when it speaks the truth.

The reality is fortunately different. The majority of the States that have signed the Kellogg Pact are members of the League of Nations; and for such States the obligations which we have already set forth remain in vigour; those, that is, of submitting all cases liable to lead to war to the procedure described in § 27. To such procedure the Kellogg Pact is now added, and is already registered at the Secretariat at Geneva in conformity with Article 18 of the Covenant. The Pact, therefore, may be invoked by one of the parties in dispute before the Council of the League, or before the Permanent Court of International Justice, or before any Arbitral Tribunal, to prevent the exercise of the faculty or right to make war in the four cases indicated in § 28. Thus the Kellogg Pact, especially in view of the provisions of Article 2, acquires an

effective juridical value which would otherwise have remained only virtual. Furthermore, the United States, and the other States outside the League of Nations that are bound by the Kellogg Pact, can no longer oppose those sanctions under Article 16 of the Covenant, by which a war may be prevented in the matter of international solidarity; however, to be really efficacious, it is necessary to find a solution to the problem of the freedom of the seas.

On the other hand, all the American States, including the United States, form part of the Pan-American Union, which, at its sixth Congress held at Havana in 1928, adopted two definite resolutions regarding war. The first is identical in substance with the Kellogg Pact, but clearer in its form, inasmuch as the more definite juridical qualification of "aggressive war" takes the place of war as an "instrument of national policy". The second concerns compulsory arbitration, which the Congress, without, however, entering into its practical organization, adopted as a principle applying to all cases, with the exception of internal wars (civil wars and rebellions) and of conflicts with States not signatories of the Convention. Towards the end of 1928 and the beginning of 1929 the Pan-American Conference on Conciliation and Arbitration was held in Washington, in the course of which the text of the Convention was established, with the signatures of the representatives of twenty Republics. Its first practical application was to the dispute between Bolivia and Paraguay over the Chaco district; the special Arbitration Protocol was signed while the Conference was still sitting.

Thus the two international organizations described above, each in its own way, complete the Kellogg Pact, in its application to cases in which a war might be held to be one of aggression, and for which arbitration would become an effective obligation.

Nevertheless, even with the Kellogg Pact, war is not completely eliminated, either in the juridical or in the political national and international systems. The steps taken hitherto

leave untouched two principles irreconcilable with the abolition of the right of war: that of the pretended sovereignty and complete independence of each individual State, and that of the pretended necessity for armaments. Hence the suspicion, insinuating itself among all people, that every pact and all anti-war procedure are doomed to failure, or are not wholly sincere.[1]

To-day we are still at this point, and this must be our starting-point for the study of whether or no war can be eliminated from the International Community. But before examining this problem it will be well to pause, so as to gain an idea of the various theories on war, which will render clearer the theoretical premises of the hypothesis that war may be eliminated. We propose to set forth the theories that are alive to-day, and which influence modern thought, and the theories of the past that originally served to justify the political factors of the present situation. A great part of the difficulties with regard to the eliminability of war are political and practical, but prejudices and even present theories, or theories of the past brought forward with the ideas of the periods in which they were formulated, hinder a clear understanding of the terms of the problem. Therefore, in considering, as we shall in Part III, the various theories of war, we will take into account their various historical environment, and the mutual action and reaction between environment and theory.

[1] On January 15, 1929, the United States Senate ratified the Kellogg Pact with only one dissentient voice. In the Report of the Foreign Relations Committee it was declared that the freedom of the United States under the Monroe Doctrine remained unaffected by the Pact. At the same time a period was added stating that "this interpretation of the treaty must not be accepted as a reservation". Senator Borah added the following declaration:

"This report is made solely for the purpose of putting upon record what your Committee understands to be the true interpretation of the treaty, and is not in any sense for the purpose or with design of modifying or changing the treaty or in any way affecting a reservation to the same."

The earliest to ratify the Kellogg Pact was Russia, who invited first Poland, then the Baltic States and Rumania, to put it into force without waiting for ratification by the other signatory States. This proposal Poland has accepted,

PART III

THEORIES OF WAR

CHAPTER VIII

WAR AND NATURAL LAW

§ 32. The principle grounding the right of war on natural law cannot be called a theory of war. To us it appears rather a premise to the theories of war. We therefore treat it first of all, in spite of the fact that historically it was late in developing and posterior to the theory of the "Just War". And, since this will affect our study of the various theories, we will begin by determining what significance it holds for us.

The most authoritative and one of the earliest supporters of the view that international law is derived from natural law was Hugo Grotius, who, indeed, went so far as to say that even the voluntary or optional element in the Law of Nations was nothing more than the product of the "*communis consensus gentium*", which consent was to be deemed "*recta illatio ex natura*". Within these limits, Grotius conceives war to have the character of an *esse juridicum*, or, as we should say, a *juridical institution*—a right of the State perfectly conformable to natural first principles—"*Inter prima natura nihil est quod bello repugnat imo omnia potius ei favent*" (*De jure belli*, ii).

But neither before nor since Grotius has there been a uniform mode of conceiving the relations between natural law and war. Some believe war to be a natural requirement, which may become transmuted into a right and a duty—a right when justly exercised, a duty when arising from an obligation. Others consider war as one of the modes of the exercise of public power; and since public power is such by natural law, it follows that the right of war derives from natural law. We find theologians who, tracing public authority to its divine source ("For there is no power but from God"), argue that the power to make war must have the same origin. Other theologians make the right of war a concession, inasmuch as natural law does not forbid recourse to war on the part of States. There are writers who hold that natural law alone is sufficient to make war

lawful. The more modern confine themselves to saying that only the moral laws concerning the conduct of war belong to natural law, but not war itself.

Nor is there less variety and diversity in the manner of conceiving natural law itself. For the Scholastics natural law is nothing other than the divine law given to all creation, and in a rational form to man, for the attainment of its essential ends. The rationalists leave out the idea of divine creation, and assert that natural law is the norm deduced by men from human nature and its fundamental needs. The positive school of jurists admit no rights and duties other than those derived from written or traditional law. Again, there was once a tendency among ecclesiastical writers to use the term "natural law" for the primitive and non-written law as opposed to the written law of the Jews. In this sense natural law is not only a natural need, but its expression in the oral tradition of aboriginal peoples.

Nor is the conception of nature the same for all. The Christians look upon nature as having fallen through Original Sin. The jusnaturalists hold an optimistic idea of an abstract human nature antecedent to any form of society. The positivists consider nature as evolving both biologically and socially.

Even the mode in which natural laws are derived from nature varies from period to period and from school to school. Some take their stand on consent of the people, some on undemonstrable first principles, some on the principle of personality, and some on the principle of society, and, in concrete form, of the State.

A point of convergence for these various schools that admit a natural law is that they all conceive it as apart from time and space, an immutable law, necessary and stable. And since the changing of human relations and opinions brings a corresponding change in many elements of law, in each epoch this mutability is variously interpreted. There are those who draw a distinction between primary and secondary natural laws, or, from the point of view that natural law has a divine origin, between necessary Divine Will, which entails immutability,

and free Divine Will, which entails mutability. Others, again, consider natural law as mitigated by dispensations and concessions. The greatest difficulties lie in defining relations of justice, and in determining which of these relations may be said to belong to natural law, which to merely positive law.

We have noted how opinions differ with regard to war. But since, apart from any particular theory on natural law, it is a common view that the right of war finds in natural law its rational basis, it will be well to define our own conception of natural law, and then to ascertain what relationship, if any, it can have with the right of war.

§ 33. Theories apart, common sense admits two facts as indisputable: first, that the Cosmos—and hence humanity, as part of the Cosmos—has its laws; secondly, that an ethico-social order is necessary, so that humanity, by observing its laws, may fulfil its own needs. And everyone, apart from any school of thought, cannot but admit that the fundamental requirements of even human nature are the preservation and development of the individual and of the species. This postulates social life, not as a voluntary choice posterior to individual existence, but necessary and co-existent with it from the time of the first appearance of human life on the earth. No one thinks that these laws apply to men in the same way as to animals, since they determine not mere animal existence, but human existence, inasmuch as man is a rational being, able to communicate in a rational manner by means of words. Hence, for man the laws of preservation and development must conform to the whole complex of his sensitive and intellective faculties, and to the ordered satisfaction and purpose of the whole complex of human needs.

In discussing the International Community we alluded to a fundamental law of human existence, which we called the "Law of Individuality-Sociality", and to the significance of the relativity of human life. It is impossible to conceive man

and human nature as other than relative, or the requirements and laws of nature as abstracted from all relationship. As such, these are inconceivable and could not exist. Man, human nature, laws, natural requirements, always appear to us in the concrete of existence, and hence in an individualized, concrete, and related form. This form we term historical, not that history, as we know it, gives us all the data of the past, but because it indicates to us facts that, having once arisen, develop and spend themselves in time and space. Thus in the concrete of history we discover what are known as natural laws—those fundamental and characteristic needs of human nature, which is at once sensitive and rational. These needs, in one form or another, appear constants, if not as experienced realities, at least as aspirations and ideals.

In real life all that exists is the social concretion—concrete relations which, according to our standpoint, we may call moral, economic, legal, or political facts, and, if they assume a determined form and are admitted as norms, institutions. In each epoch we may note their birth, development, and decline. Laws, whether customary and oral, or written and codified, contain at once constant and fundamental principles, and voluntary, conventionary, traditional, or practical elements; and these are so interwoven that it is often not easy to tell what in such laws conforms to reason and what is, or may come to be, a deviation from it. The greater or lesser conformity of such laws to the requirements of human nature depends on a complex of facts, which sociologists, jurists, historians, and moralists seek to elucidate and explain, but which they often find incomprehensible and mysterious. Man as he gains in self-consciousness, in consciousness of the world and its causes, takes his own inward progress as the measure for a better estimation of humanity in its past and present. He thus rejects as repugnant and inadequate to human nature many practical beliefs, rules, and criteria that in another age or another environment were judged to correspond to the greatest individual and social good, and hence to the intimate laws of nature.

Within this frame we find such factors of progress and elevation as the philosophy and art of the Greeks, the law of the Romans, the proselytism of the Hebrews and the Old Testament, the preaching of the Gospel, the Fathers of the Church and the schoolmen, the art of the Middle Ages, the Renaissance, the regime of liberty—all of which go to form the historical complex of Western civilization which predominates in the world.

As little by little these conquests of human thought and life penetrate into human consciousness, the laws of nature and its needs are more intensely felt, and hence their rationality becomes better realized—a rationality which is precisely a law of synthesis embracing all other human requirements, just as reason is the synthesis of all the faculties of man. It is needless to note that for believers the coming of Christianity is not a mere historical product, but a divine revelation inserted in the history of humanity for the supernatural elevation of man; but here we note it as an historical fact and a fundamental element in the present Western civilization. The whole endeavour of humanity in the complex we call civilization tends to conform to and actuate the laws of rationality and to outgrow the laws of animality. This movement is always actual and never ceases, for in the concrete rationality and animality coexist, just as in the human individual matter and spirit coexist. Hence the effort to establish in theory and in abstract, or general, form the laws of practical rationality, the ethical laws of human conduct, and the laws of moral values in human institutions. These laws, established as permanent and immutable, are made the goal for each individual and for society, so that customs and social institutions may be reformed by a continual movement towards adequacy. But it is impossible for the general, the abstract, the permanent, as the human mind conceives it, to become individualized without becoming particular and concrete, with all the signs of actual life experienced that stamp it as relative and historical, though tending always towards a deeper rationality.

§ 34. In this effort towards rationalization certain fundamental elements remain constant—those that we call ethical, because they are concerned with practical life, and which reduce themselves to morality of human acts and to justice of relations. These two elements are fused together in the Christian law of love. But when these elements materialize in acts and facts, they acquire the significance of historical relations and must be judged in their relativity. It is precisely in this relative form that law materializes, i.e. *the power to act or to require others to act, and hence the duty to act and to allow others to act.* Or, in a negative sense, *the power to refrain from acting and to require others to refrain, and hence the duty to refrain or to allow others to refrain.* This power, in order to become law, cannot remain in abstract terms, but must assume concrete and individual form. It contains in itself all the practical elements of determined events and historical processes. The fundamental ethical principles are, so to speak, embedded in the concrete facts; indeed, such principles live in the concrete as man lives, since it is man that operates in his own individual history.

In this sense a generic and abstract law as law cannot exist. To exist, law must be concrete, be conceived as concrete, referable to the concrete fact. Indeed, man implies society, society implies relation, relation implies law, but man, society, relation, and law necessarily imply concrete existence—that is, history. Now to use the expression "natural law" as meaning a law with an objective existence of its own, that may be applied to concrete facts, but of which the aspect is permanent, absolute, and immutable, is to make an analogy the basis of an abstraction. In substance, it expresses merely ethical concepts in general terms—that is, morality as regards human actions and justice as regards human relations, combined in the synthesis of Christian love, which represent the highest rationality of human actions and relations.

Thus, when any human action or relation comes closest to reason, it is said to come closest to nature, and when it is

furthest from reason, it least corresponds to nature. In this sense we speak analogically of natural law, inasmuch as we seek the fundamental elements of justice and morality, and inasmuch as we estimate these elements as rational apart from any concrete materialization, and in speaking of rationality have recourse to the intuitive and undemonstrable first principles, or from these derive the secondary and demonstrable principles.

But natural law in actual fact is historical law, or without further qualification, law, and it evolves with history. This relative or concrete expression of law does not come outside the fundamental requirements and laws of human nature, but is engaged in a continual effort to correspond to them. Classic examples of this are the passage of the family from polygamy to monogamy, the cessation of slavery and serfdom, the abolition of bloody sacrifices to Deity, the abolition of the duel, of the trial by ordeal, and of the family vendetta. All these institutions were once believed conformable to morality and justice—that is, to human nature and its laws. Subsequently they were done away with or modified because they were no longer believed conformable to human nature and its laws. The law created by these institutions has been modified, or has disappeared with their modification and disappearance.

It is not possible for any human institution to be without some minimum of rationality or pseudo-rationality, and hence without a certain conformity, whether real or assumed, to nature. In every historical institution there must thus be some relation to the requirements of nature—even though this be tenuous and indirect, and whether objective or subjective, real or apparent. But this minimum of rationality or pseudo-rationality ceases to be a minimum if the concrete and historical terms are displaced, inasmuch as the historical process reveals more clearly the rational elements which should have been inherent in the institution.

Thus in a given legal regime, family justice, which in itself is capable of degenerating into a chain of vendettas, may have

a legitimate and rational character. In the same way in a given economic regime it is possible to find some remote elements of rationality or pseudo-rationality in slavery and serfdom, and to-day in the capitalist regime one may discover some fragment of rationality in the wage system. But once the historical terms of these facts are displaced, their unreason becomes plain, so that in ethical terms we call it injustice, immorality, or want of equity. The mistake of the jusnaturalists, and of the natural law school in general, lies in confusing the ethical and historical terms of an institution. They would stereotype it as it is to be found in some given moment of the historical process, making it the expression of an objective right and law deriving from nature, and this merely because in a given period of history the general conscience, not fully enlightened, found rational elements in such institutions, and for want of more accurate appreciation was not shocked by their irrational elements. Hence even the exponents of natural law are little by little finding themselves forced to rediscuss the terms and values of the relation between historical institutions and natural law, and to modify their previous decisions. The codification of a natural law established outside time and space must perforce be continually made to correspond to the realities of human institutions bounded by time and space.

Just as in certain ages we find philosophers and jurists who affirm that slavery is conformable to natural law, we may read that the death penalty, or even torture or war, is conformable to natural law. Instead, all these are merely "historical rights", to be modified and changed according to the concrete relations of social life. The ethico-legal substance of these facts lies in their particular and contingent rationality—or pseudo-rationality—which in practical life may even correspond subjectively to morality and justice.

But what is the measure of this morality and justice? The measure is that of relationship to right reason in the light of first principles. But since such rationality takes outward form in acts and facts, general consent, which Grotius calls "*recta*

illatio ex natura", is taken as criterion, or, as we say to-day, the general conscience. This is only a sign, not a reason. Nor is it always right, for error and truth, good and evil, are inherent in the world itself. Hence the enlightenment of Christianity is a starting-point—we should say a necessary starting-point—for a right understanding of the ethical factors that correspond to the requirements of the rational nature of man.

§ 35. What we have already stated shows clearly:—

(i) That the right of war is a *historical* right, like all the rights inherent in human institutions, for these imply determined and concrete rights evolving in accordance with the historical process.

(ii) War cannot be affirmed to be a natural right, or deriving from natural law, inasmuch as one cannot speak of an abstract and objective natural law.

(iii) Finally, it only remains to be seen whether any ethical elements, justice, morality, or Christian love, can exist in the institution of war—that is, what are the rational or pseudo-rational elements attributed to it by common opinion.

It is well, however, to note that war, like every other human institution, is not an abstraction, but concrete and referable to a given historical moment. Hence to give the exact significance of war it is necessary to refer to determined wars of history and not to war in general. We therefore turn to the types of war that we have studied, with such historical references to the past as may be necessary for a clearer understanding of the subject.

We have already seen (§ 22) how war finds its place in the moral system under the aspect of lawful defence, more accurately styled by the moderns a state of necessity. We have seen also (§§ 23–26) how in the wars of to-day a state of necessity in the true sense of the term cannot arise. Thus it would seem as though all elements of rationality and hence all grounds of legitimacy were absent in wars between civilized States to-day. The historical right of war would thus, in accordance with loftier ideas, have lost all relationship with its natural basis,

which is precisely rationality, so that wars between civilized States, or wars resolving themselves into wars between civilized States (§ 23) would appear devoid of elements of morality and justice.

Yet we have seen that in the present international system there are cases of war held to be legitimate, and as such formally authorized by conventionary agreement, as in the cases provided for by the Covenant of the League of Nations (§ 28), and those which are admitted within the Kellogg Pact. In these cases there exists an external, social, and legal rationality, which in function of the present moment may attain an ethical pseudo-rationality, inasmuch as many difficulties in the way of the installation of a complete system for the pacific settlement of interstatal disputes have yet to be overcome. But in these cases two important and real factors are taking shape—the idea of the aggressor and pact-breaking State, and the idea of a higher reason demanding the respect of laws and conventions—that is, an organized justice.

If from the wars between civilized States we pass to the wars of to-day of types (*b*) and (*c*), indicated in § 23—that is, civil wars and colonial wars—we realize that we are faced with different historical factors, and hence must bring a different criterion to bear in estimating the moral and legal elements in such war. Indeed, up till to-day, there has been no international organization with power to intervene in such matters, and the two parties, the State and the national minorities, or the State and its colonies, are left to determine their relations between themselves. Nor are the two parties on the same footing as to organization, responsibility, or rights. The difficulties, therefore, of settling the dispute without the use of force are greater, and such wars may still present some minimum of rationality for either side, conforming to the position of the state of necessity. Yet it is well to be clear on this point. The state of necessity may be admitted only in regard to the factors previous to the war—that is, the revolt and aggression. But these do not constitute war, and may spend themselves without giving rise to

war. War may follow, when the State believes it has the right to reject the demands of the rebels and to put down the rebellion, and the rebels, in seeking to establish their rights, assume the status of belligerents. We shall speak in the following chapter of war as regards State rights, national rights, and colonial rights. Here it is enough to note the distinction between the various types of war, according to their elements of rationality or the contrary, so as to see how, with the variation of the types and concrete instances of war, there is a corresponding variation in their morality.

Indeed, if we turn from to-day to the past, we cannot fail to note that the state of necessity, and hence the factor of lawful defence, could then arise more frequently and systematically, especially in the encounters of different civilizations, in the movements of great migrations, in the primitive conflict for means of life.

By this we do not justify all wars. We merely indicate what elements of rationality or pseudo-rationality might be present in certain wars in a determined historic environment. In any case, such rationality could not be absolute, but relative to the conditions of the time and to the stage of evolution of the general conscience.

In substance, we deny that war can be considered in the abstract, whether regarding it as a right or as a rationality. We affirm that in the concrete war has become a usage, clothed with legal forms and guarantees in the course of the historical process, so as to come to be estimated a legal institution. As such it could not fail to be rationalized, either objectively or subjectively, in relation to the concrete phases of history. This element of rationality could only rest on the feeling of necessity or on the instinct of defence. The slighter the relation of war to a state of necessity, the slighter its rationality, till this disappears altogether. It is not, however, indispensable to this relationship of rationality or pseudo-rationality for the state of necessity to be truly such. It is enough for it to be reputed as such by the general conscience and social system of the time.

Thus we can explain how in the past, and even to-day, war is believed the sacrosanct right of States, and to fight in battle the duty of a citizen, and to die fighting a glorious thing. And monuments are erected and hymns sung and mysteries celebrated around the vast butchery of war, which destroys lives, goods, the whole prosperity of peoples, in the name of a right that is no true right, of a justice that is no true justice, of a rational humanity that is in substance neither rational nor human. Thus the irrational predominates.

The process of the right of war from rational or pseudo-rational to irrational is thus above all the process of the general conscience. Its background is that of international organization, based on a permanent system of justice between the States. Of this we shall speak in Part IV.

§ 36. There remains a grave difficulty, which this theory appears to render insoluble. War *per se* postulates the right to kill and to cause to kill, the supreme right, the *ne plus ultra* of human authority. If war has not a solid and stable foundation, such as a natural law deriving from a divine Legislator in whose hands are life and death, it is impossible to find any sufficient reason for the right to kill or to cause to kill. And even if the expression "natural law" is considered analogical and abstract, so that it is thought better to insist on the broad ethical concepts of morality and justice, we must recognize that war must always have an effective content of morality and justice as a basis for the right to take life. Otherwise, war would be the most monstrous of human iniquities, and this is contrary to common sense, to the ethical tradition of the peoples, and even to the religious concepts and doctrines of Christianity.

We have set the problem in its most explicit terms so that our solution may be appreciated in all its bearings.

We believe that no man and no social authority has any real right over the life of another man. Life is the basis of personal rights, and even the individual himself has no right over his own life, so that suicide is justly held to be immoral. The

slaying of a person is fundamentally devoid of rationality, and hence outside the terms of morality and justice; and the will to slay is contrary to the terms of morality and justice.

Nevertheless, in the ambit of history the taking of human life has been admitted and rationalized under the empire of the use of force to resist force. As an historical right it has assumed three typical forms: (i) the law of talion, or the private and domestic vendetta; (ii) collective defence against collective aggression; (iii) social defence against the breaker of the social law. That is to say, three regimes—the family justice, war, and the judicial death penalty—in which the right of the defence of society is grounded upon organized force in order to prevent social offences caused by abuse of force. The rationalization of these historic rights consists in the contingent relationship, whether real or imaginary, between offence and defence.

For us this relative rationalization, which under certain aspects might be called pseudo-rationalization, does not go behind the historic setting, and provides us with no absolute right, no absolute expression of morality and justice. Such expression is instead relative, and hence in process of evolution towards higher forms of rationality, and hence of morality. "*You have heard that it hath been said : An eye for an eye, and a tooth for a tooth. But I say to you not to resist evil. . . . Love your enemies*" (Matt. v). In these words Christ announced the new Christian law, whereby the Hebrew law of talion was annulled, and the family vendetta lost its moral basis, and the individual was initiated into the law of non-resistance to evil in the sense of mortifying his egoism to the point of loving his enemy.

One step farther. The adulteress that the Hebrew law condemned to death was pardoned by Christ, and the accusers and executioners withdrew under the spiritual injunction, "*He that is without sin among you, let him first cast a stone at her*". Here, too, an inward and moral law rectified the harsh social law that condemned to death. Yet both the private vendetta and the judicial death penalty remained for centuries in human

society which, in its various contingent and reformable institutions, has never wholly outgrown these historic forms of offence and defence. The more such institutions were penetrated by the spirit of Christianity and the synthetic law of love, the more were they rendered rational.

War, too, therefore is an historic form of collective defence. This defence is held to be necessary, and within its margins the relationship arises of force resisting force. Yet war gives to no one the right over the lives of men as men. The necessary consequence of an organized defence in a social form on the basis of armed force is to do away with the personal responsibility for taking life. The immorality of the act of taking life is cancelled by the condition of necessity governing those engaged in mutual slaughter, and this condition of necessity may be real. But, again, it may be an imaginary belief, the result of direct or reflex conviction, or of social conditions that have been formed by inadequate social organization, or of an historical tradition not yet outgrown, just as family justice and the judicial death-penalty are not wholly outgrown even to-day.

For this reason Christianity's whole endeavour in regard to war has been twofold—to elevate social customs so as either to prevent war or to organize society in such a manner that war should bear the stamp of public authority, and to create the conviction that only the just and necessary war is lawful and may be morally pursued. All this tends to reinforce its elements of morality, and thus to establish the relations of rationality on a more stable ethical basis than a generic assumption of natural law. From the endeavour to moralize war derives the systematic theory of the "Just War". Of this we shall speak in Chapter X.

CHAPTER IX

WAR AND HISTORICAL RIGHTS

(*a*) State Rights. (*b*) National Rights. (*c*) Colonial Rights.

§ 37. We use the expression "historical rights" in the sense we have already indicated—that is, to denote the rights acquired by the various peoples in the course of their historical process. We here refer to the rights, or to the premises of the rights, that give rise to the perpetual preparation of war, and in the concrete to such types of war as we have studied in Chapter VI. We will deal, first of all, with *the rights of the State*.

(*a*) The first undisputed right of the State is the preparatory organization of war by the organization of armaments, manifesting itself principally in the raising of public moneys for the purpose, and in conscription. The rational basis of such rights is the concept of the common solidarity and common interest of all in the security and development of the State. In despotic regimes this solidarity leads to the assumption of a tacit general consent, and in constitutional regimes to the assumption that the consent expressed corresponds to reality. But this rational basis assumes the rationality of the right of war. Hence the more public consciousness becomes persuaded that the right of war is wanting in rationality, or that its pseudo-rationality rests on feeble, arbitrary, or non-existent foundations, the more the rationality of the right of preparatory war-organization will tend to diminish and disappear.

But even in the present phase, when the right of war is recognized, conscription oversteps the margins of any voluntary and conscious solidarity of the citizens with the State. The bond of necessity is wanting, and could only be provided by an actual or threatening war. There is no proportion between the requirements of active war and a mobilization capable of reaching the immense figures of the last war, thus inverting

all moral values and changing even the aims of the war itself. We are not in agreement with the representatives of France in the Disarmament Commission, and with those others who hold compulsory conscription, with its equality of obligations on the part of the citizen towards the State, as a product of democracy. This obligation should be reduced to the minimum —that is, to physical training for young men, on the one hand, and to the general call to arms if, and when, national danger requires it, on the other. Thus would be avoided that harmful form of conscription, with its detaching of the young man from his own environment and from his appropriate training for life, and the exaggeratedly militarist spirit which poisons the moral fibre of a nation. The career of arms, like every other professional career, should be free, and should, in time, become one of interstatal police work, rather than a technical preparation for war. We, therefore, hold that propaganda for the abolition of conscription is legitimate. We do not hold propaganda for desertion equally legitimate, for purely practical reasons. But if the public conscience were generally to assert itself as contrary to all war and to all armed organization, and if this ideal were making effectual and simultaneous progress in all, or the majority of, civilized States, then both desertion and the refusal to fight might become legitimate. Rationality, so it seems to us, would point in that direction.

It is usual to object that such theories would mean the disintegration of the State, whereas it is to the common interest that the State should be strong and that political authority should rest on sure and constant foundations of law and force. Hence, since the public authority should be sole judge of the means for defending a State, all agitation or propaganda for depriving conscription of its legal and moral basis is deemed inadmissible. These assertions comprise the current ideas on the State and its powers. We do not intend to go into this question, which would carry us too far. Here it suffices us to reaffirm, what is the gist of the present work, in the first place, that the State is always in process of evolution and transforma-

tion, and hence must not be looked upon as either static or absolute; in the second place, that the State is not the end of the citizens, but the citizens are the end of the State, and that the fount of law is not the State but human personality; finally, that every great modification in human institutions is preceded by theoretical conviction and propaganda. Just as the XVIIIth century brought the abolition of the remains of feudalism in Europe and the XIXth century the abolition of slavery in North America, we hope that the XXth century will bring the abolition of conscription as a step towards the abolition of war. We do not question the rights of the political authorities to organize the defence of the State, but we deny that any State has the right to compel its citizens to military service—that is, to create an armed nation, in contradiction to the sentiments of peace, civilization, and progress. In any case, we find examples of States able to organize an efficient defence without conscription. The practical problem becomes insignificant beside the moral and legal problem; all that would result would be a change in the methods of defence and their reduction to the limited proportions really required for police purposes and the guardianship of order.

(*b*) The assumption of State solidarity is also the basis of the right of the political authorities to decide upon and declare war, without any direct participation or commitment on the part of the people. In absolute Governments even the indirect expression of the will of the people is wanting, while in parliamentary Governments it may be indirectly manifested by representation. Actually, there is never any conscious, voluntary, and real decision on the part of the community. The presumption is in favour of the public authority. That is, the public authority in deciding to accept or declare a war is presumed to be acting for the good of the State, and hence of the whole community. But this is merely a legal presumption—a very shaky foundation on which to base a right so big with unforeseen consequences, responsibilities, and evils. If we examine the chief wars of which history speaks, we see at once that this

presumption is a fiction, for in the greater number of cases the peoples concerned would never have desired or decided upon war, and the presumed good of the State has almost always transformed itself into real evil—loss of life, of goods, of means of livelihood, with serious diseases, pestilences, famines, and often defeats or quasi-defeats super-added. And the moral evils are always far greater than the material evils, through the disorders, unrest, turbulence, and hatred generated by all wars. Hence the true democratic currents justly seek to limit the public authority's right to decide upon war, and to vest it genuinely in the whole community.

It is clear that there are grave practical difficulties in the way of a referendum whether war should be or no. But this would offer such an impediment to wars that in itself it would have a considerable effect in limiting their occurrence. In any case, we confine ourselves to noting the irrational elements in the historical right of the State against the background of to-day, and the tendencies towards overcoming this irrational quality by a better organization of historical rights. We cannot here deal with practical problems such as the referendum, though theoretically it conforms to our ideas.

(*c*) The same concept of State solidarity is the basis of the presumption of the guilt of the entire population of a defeated State, and hence of the right of the victor to impose his laws on the vanquished. We shall see how illogical is this idea of guilt when we come to speak of the theory of the "Just War". Here we note that the people, while they have no part in deciding upon war, in virtue of this presumed solidarity must bear the whole burden of the war, and, if defeated, the whole responsibility for it. This theory in the course of history has lost much of its significance, though in the last war there was an attempt to revive it and to assume the collective responsibility of Germany, her allies and associates (Treaty of Versailles, Art. 237). This idea arouses considerable repugnance in the modern juridical conscience.

Among the rights of victory we no longer reckon that of

enslaving whole populations, of taking vengeance on unarmed cities and countries, and other savage usages, which still existed in the wars of Louis XIV. To-day reprisals occur exclusively during the fighting—ancient and modern barbarities such as the aerial bombardment of defenceless cities, submarine attacks on merchant shipping, the famine blockade of a people, and the like. Yet the ancient right of exacting war indemnities often beyond the capacity of a vanquished people still remains, creating a genuine economic servitude. So also does the power of the victors to dispose of the territories of vanquished States. After the Great War, a barbarous custom was revived in the Near East—the exchange of populations between victors and vanquished. Such exchange was voluntary only in name (in the Lausanne Treaty, indeed, it was expressly stated to be compulsory) and meant the open violation of the rights of human personality and of private rights, with indescribable misery to the peoples concerned, forced to emigrate under terrible conditions. No true jurist can hail such deeds as a right to be registered among those marking human progress.

The moralists refuse to recognize any right of indemnity to unjust victors—that is, when the war motives of the victors are wanting in the elements of justice. This idea has always been inapplicable, for the victors have always believed justice to lie on their side. To-day the victors' right of indemnity is admitted apart from the question of motives, but only in proportion to the capacity of the vanquished. It must not create economic servitude, or lead to the starvation of entire populations. The right of commanding the dismantling of fortresses, compulsory demilitarization, and similar measures, is also admitted.

We can no longer, however, admit that the victors have the right to dispose of territories as spoils of conquest. Indeed, in the XIXth century *the plebiscite* was introduced, when territory was to be transferred from one State to another, as a means of hearing the will of the people and as legal affirmation of the principle of self-determination. This norm received

further confirmation from Wilson's messages, and was accepted as the corner-stone of the peace of 1919. Nevertheless, it has not been consistently observed, and even the League of Nations, in the jurists' report on the Aaland Islands case on April 16, 1921, decided that this norm did not constitute an obligation of international law. We believe that in time it will become constant for want of a better, but we cannot but admit that it alone does not provide all the necessary guarantees, for post-war plebiscites are not often so free and spontaneous as to be able to claim a just credit. Moreover, we recognize that general interests may be opposed to the particularist desire of nuclei of peoples, and that temporarily or for practical reasons such nuclei may not be in a position to give such interests right and serious consideration. Various guarantees and revisions would be necessary to reconcile the conflicting interests, so that they should not be left to the discretion of the stronger and victorious State, nor to the uncertainty of passion-swayed plebiscites. But this brings us to another problem—that is, how can the exercise of these so-called rights of victory be regulated?

The League of Nations to-day is not capable of intervening in this matter save on questions forming the subject of existing pacts in which its right of intervention is recognized. But the problem of whether territory may or may not be disposed of by the victors is of the highest importance. It constitutes one of the incentives to war, and it leads to the more general problem of the *rights of nationality and the rights of minorities*.

§ 38. The principle of nationality appeared one of the great conquests of the modern spirit, the fruit at once of the romanticism and individualism of the XIXth century. It was, indeed, a great victory compared to the rights claimed by reigning houses and the patrimonial conception of the State. The mistake lay in raising this principle to the status of an indisputable dogma and in attributing to it absolute value. It has a relative and historical value, and it does not overreach the bounds of concrete happenings, so that one may and must recognize that not only is it not always and everywhere feasible, but

that it does not always and everywhere coincide with the interests of mixed peoples. Switzerland may serve as example.

The first difficulty is to understand what is meant by nationality, so vague is its concept and so fluid its contours. In the second place, we must admit that the unity and solidarity of peoples and the fusion of races are produced by other factors than racial characteristics alone. Common defence, common economic interests, equal rights, and religion, tradition, history, culture, all combine to create a homogeneity over and above pure nationality. If we study thoroughly and deeply the various questions of nationality which have arisen in Europe, we may note that they have and had their roots in two fundamental feelings: (i) the feeling of economic or political subjection to a different class, race, or people, so as to create an antagonism as between victors and vanquished; and (ii) the feeling of an effective difference of culture, or, maybe, of religion, marking a difference in mentality and also the ripening of a separate personality. Thus the struggle for autonomy and liberty arises from an interior impulse.

The principle of nationality is the banner of to-day. Yesterday the banner might be religious liberty, or loyalty to one dynasty rather than to another, just as in the Middle Ages it was the creation of a communal centre. All these are synthetic expressions of economic and political needs and feelings, to which they give significance and ideal value.

By these criteria it cannot be denied that the peoples subject to a State may possess in a more or less latent form the fundamental right to create a personality of their own and hence to obtain administrative or political autonomy. From this standpoint one may ask if and under what circumstances revolts and the ensuing wars may be legitimate. This problem may be related to the problem we mentioned in § 37, the right to dispose of the territory of a vanquished State, and the corresponding right of plebiscite.

The schoolmen, and after them the moralists of the XVIth

and XVIIth centuries, admitted a right of revolt only in cases of real oppression or tyranny, but not for reasons of nationality which then had no force. After the revolutions of the XVIIIth and XIXth centuries this right was recognized in a wider form, as embracing both the conquest of political liberties and vindicating the right of nationality. It must be realized that an absolute right of revolt does not exist, any more than an absolute right of war. What exist are historical rights, and the right of revolt evolves and has its place in the stream of history with a significance corresponding to the period, the stage of civilization, the personality achieved by each racial or religious nucleus, and the type of government compared with the average government of the time. For what might be called tyranny to-day has a different force from what might be called tyranny in the Middle Ages or in the pre-Christian period.

From this relativity it follows naturally that when minorities have the means of expressing and asserting their interests and can agitate by legal methods, revolts are unjustifiable and injurious. And if an international organization exists with the faculty of revising peace treaties and pronouncing on questions of racial and religious minorities, or intervening in respect of the agitations of "unredeemed" nuclei, then the rights of such peoples would be still further rationalized and revolts or national wars have no *raison d'être*. This concerns, as we see, the phase prior to war and resembling a war dispute, and hence such cases should be considered in the light of the criteria concerning war that we have set forth in the foregoing chapters.

There are, however, two important differences: (i) The first is that these questions of nationality—outside the setting of international conferences like that of Vienna in 1815, of Berlin in 1878, or of Paris in 1919—remain within the sphere of domestic politics. The League of Nations has not *per se* the right to intervene so long as these questions do not become factors in a war involving various States. The right of the

League is confined to those racial and religious minorities that are expressly placed under its guarantee and control. (ii) The second difference has a twofold origin. The requirements of the modern State are such as not to admit of any loss of territory through autonomist movements, for this might weaken it. And any change in the conditions laid down by the peace treaties might lead to fresh wars with far further-reaching effects than the mere vindication of an autonomous national personality.

This practical state of affairs attenuates the historical right of nationalities to claim autonomy or to unite in like and homogeneous racial groups, and reinforces the right of States to maintain a political unity over and above the separate rights of the populations of which they are composed. Reciprocal respect of these rights should result in a balance between forms of liberty, and in the respect of the language, religion, culture, and personality of every people co-existing in one and the same State, and should render possible those changes which are inevitable in historic evolution, when the maturity of all the constitutive elements of a people leads to the formation of another and distinct family.

This the British failed to see in the case of the Boers of South Africa, and in that of Ireland, but events proved stronger than their power and dominion. The experience thus gained, and the growth of self-consciousness in the various parts of the Empire, has led to a broader and freer Imperial constitution than the world has ever before seen, namely, the present British Commonwealth. To-day in Europe many national positions are compromised by the instincts of dominant and victorious peoples or of dominant nuclei within a State, and certain mistakes, certain irrational and unjust mutilations of territory, are bound sooner or later to lead to political difficulties, domestic and foreign. The possibility of revision of treaties by the League of Nations is a safety-valve, but this safety-valve must be resorted to in time, before motives of war have been irreparably created. And it must be recognized that subject

peoples, oppressed, offended in their racial feelings, culture, and religion, have primordial rights which reason and civilization are bound to respect.

§ 39. *The Colonial problem* is very complicated. It is difficult to reconcile the fundamental rights of native peoples with the historical rights of the colonizing peoples. There are insuperable sources of friction between the two, and, as we have seen, the factor of force gains the upper hand of that of law. The former is elementary and instinctive for both sides, the second reflex, to be appreciated in the establishment of mutual relations. Not only are different civilizations and different racial instincts in conflict, but the positions of the two are irreducible—that of conqueror and that of conquered.

The starting-point for an examination of what we may call the historical right of colonization is precisely the question whether such a right can be rationally admitted. This question was much debated by the moralists and jurists of the XVIth and XVIIth centuries with reference to the dominions in the New World and the occupation of the lands discovered by the explorer-navigators of the time. No such problem could have arisen in Europe before that period, for the domains of the Crusaders and those of the Italian Republics in the East were not true colonial conquests. They originated in the wars of defence and offence against Islam, which, having invaded the East and Africa, threatened the West, and was considered a foreign enemy of the Christian people and the European community. The occupation of newly discovered lands did not originate in wars in defence of Europe. What they represented was European expansion, colonization by the white race, and a flux of emigration from Europe.

From the very beginning this new fact had to be expressed as a legal institution and established in rational and legal form. The most elementary idea was that discovery entailed right of occupation, but in many cases this was complicated by the existence of natives, who, for all their primitive customs, had an

organization and traditions of their own; while some, like the Aztecs, had known an earlier civilization.

The theologians and jurists of the time wrote at length on the rights of the reigning Houses of Europe to add to their crown dominions overseas, and amid a series of reasons pro and con, based on a priori criteria, or on contestable and erroneous juridical and religious assumptions, they brought forward as a conclusive argument the canon of the Law of Nations—that all peoples must have the inviolable faculty of communicating among themselves for moral and economic purposes, "in so far as they do not injure or harm the natives of the place". This right resolves itself into the rights of travel, trade, and emigration. The jurists of modern international law do not recognize them as true international rights, but only as faculties, which may be limited by each State. In this the moderns, from the legal standpoint, are stricter and more irrational than their forbears. In practice, however, the rights of communication and emigration are to-day better regulated and guaranteed than they were of old.

The condition set by the moralists of the time by the phrase "in so far as they do not injure or harm the natives of the place" was and should have been the boundary of contact between Europeans and natives, the line of demarcation between morality and utility, the basis of future law between peoples hitherto strangers. But in practice the moralists' rule was overstepped, and the conflict between the two races assumed a savage ferocity, unattenuated by moral or religious criteria or by legal norms, and giving rise to such destruction as accompanies primitive migrations and barbarian invasions.

The result was that the European peoples superimposed themselves on the natives, whom they either exterminated or reduced, or else conquered and subjected to themselves. In this case they either deprived them of their customs and goods, or else maintained their organization as subordinate to the European dominion and embedded in it. The chief method was the war of conquest, which became often a war of exter-

mination. On reading the discussions of those days one is horrified to find university doctors and celebrated moralists who adduce a series of philosophical and Biblical arguments to prove the existence of the right of slavery in respect of such peoples, and not only as the result of war, but by natural law. Dissenting voices were not wanting, especially among the Missionary Orders and enlightened men in general; but unfortunately the juridical system of the time led to the attribution of absolute powers to the sovereigns by Divine Right, and the extension of these powers to colonial matters.

Indeed, the idea of the patrimonial State of the XVIth century meant that the colony was considered as the patrimony of the reigning House, and as such it was treated till the white races, having almost completely ousted the natives, aspired to a personality of their own. Even such aspirations were met by the States of Europe with resistance and hard-fought wars. When the Americas revolted and demanded independence, the European States only yielded when the trial of arms had failed. Spain even sought the ecclesiastical intervention of Rome to uphold the rights of its Crown.

In spite of the experiences of the past, in the matter of colonial rights we have not advanced very far on the old ideas. Even to-day it is believed that civilized States have the right to occupy colonial territories. Indeed, the foundation of the African colonies of Germany (which are now under Mandate), and of Italy and Belgium, is recent, not to speak of those of France and Great Britain. Even to-day it is believed that States have the right to conquer colonial peoples and to force them to receive the laws and customs of the conqueror. And even to-day civilized States deny to colonial peoples the right to revendicate their autonomy and personality and to shake off the foreign yoke. The Declaration of the Berlin Conference on Africa (February 26, 1885), and the Convention of Saint Germain en Laye (September 18, 1919), did not modify the elements of historical colonial rights.

A notable difference between to-day and yesterday is the

recent institution of the Colonial Mandate, with its attribution of self-government to the respective peoples, by the Covenant of the League of Nations (Art. 15). This represents a greater respect for the personality and customs of native peoples, and even an incipient collaboration, with a view to elevating inferior classes and races. Yet all this is only an improvement in behaviour; it does not exclude economic exploitation or political subjection. Moreover, no civilized State tends to recognize to the colony the right to political autonomy, which it will demand when it comes of age—that is, when its life and thought conform to the rhythm of self-conscious peoples.

To-day a rational revision of colonial rights is necessary. It is true that no revision is possible outside the process of events, but it is certain that this process is ever in course. And the problems of the occupation of Chinese territories, the systematization of British India and the French possessions, the Mediterranean colonies and protectorates, or those of Central Africa, and others again, are still unsolved. The chief problem is how to comprise colonial law in international law, or better, the colony in the international organization—that is, how to gain the recognition of the fact that the colony has an international significance and a legal status of its own, apart from its relations with its dominant State. This would mean the recognition of a reciprocity of rights and duties between States and colonies, which are not purely relations of domestic politics, but juridical relations that should have international recognition.

This is nothing new. A beginning was made in regard to hygienic and moral measures—the problem of slavery was faced as early as 1815, in the Congress of Vienna—and in 1919 came the Colonial Mandate. But these have been only feeble beginnings. It will need great racial movements to awaken the civilized States to their duties, which will be also their necessities.

Given the present colonial system and the theoretical geographic boundaries of existing colonies, the margins for

new colonies are limited, and the tendency is rather towards economic than true political dominion. Yet not even economic dominion constitutes a generic right, but only initial relations between civilized States and their colonies and independent native peoples. Thus often both questions are combined in one—the maintenance of the present regime with such amplifications and restrictions as reasons of utility, convenience, and political wisdom shall counsel.

Yet both the present state of affairs and the natural course of its development no more justify future violations of elementary human rights than they justify the wars, servitude, and violations of the past. Historical colonial rights are not absolute and irrevocable rights; they do not constitute a title to predominance and spoliation, and they cannot prejudice the rights of human personality and of social nuclei among native peoples.

Under this aspect we must affirm that colonial dominion is and must be considered a transitory phase, and a means towards the evolution of native and mixed peoples in the direction of autonomy and political and civil personality. Thus the transformation of a colony into a Free State co-operating with the Mother Country may come about in a longer or shorter period, inasmuch as good administration, a suitable economy, improved education, and the influence of a civilization such as that of the West, may be helpful in raising such peoples to a civilized level.

But if the subject peoples find foreign dominion irksome, and, promoting national risings, are ripe for a life of their own—like the Americas and like the Boers—it is unjust and contrary to a rational concept of the evolution of historical rights to insist by means of wars of repression in maintaining a dominion which for good or ill has fulfilled its function.

Certainly the rationalization of colonial rights, and hence the regulation of colonial wars, will be difficult outside the closed ambit of the sovereignty and responsibility of the State. It will be difficult till, on the one hand, civilized peoples grow conscious of the limits of their rights, and, on the other, a

collective consciousness develops among the colonial peoples. To this development Christianity will contribute with new vigour, in view of its missionary and civilizing office which is congenital with the purpose and existence of religion. And in this the Catholic Church will have more freedom of action than in the past, since she is now less bound by bonds of outward solidarity with the powers of the State. The old dynasties and the absolutist regimes have vanished, and she has been able to begin her liberation from the new bonds of nationalism.

Yet till there is an international organization of which the legal and moral influence extends to the colonial system, and till colonial rights are made part of international law, and, further, till the colonial personality and right to be heard is recognized, and a human solidarity with colonial peoples thus created, the irrational phase of historical colonial rights will not have been left behind.

The "historical rights" that we have examined in this chapter, and which resolve themselves into the preparation and development of wars and revolts in the interior of the States and colonies, are not true rights but organized situations. They create transitory and evolving relations for which war has still a mystic and resolvent potency, since a more comprehensive and higher form is lacking to keep the balance between rights, interests, and sentiments.

CHAPTER X

THE THREE SYSTEMATIC THEORIES

§ 40. What may be called the systematic theories of war, which have an intrinsic logic, and a concrete correspondence to determined periods of history, reduce themselves to three: (*a*) the theory of the Just War; (*b*) the theory of war for the reason of State; (*c*) the theory of the Bio-sociological War, which may be either Imperial or nationalist.

Let us begin with the Just War theory. By this theory war is lawful and moral only when it is just. The justice of war, according to the moralists, depends upon four definite conditions: (i) the war must be declared by the competent authority; (ii) it must have an adequate motive, grounded on justice; (iii) its aim must be the restoration of order and peace; (iv) there must be no other effectual means for the purpose.

The theory of the Just War grew up under the influence of Christian thought. In antiquity the Jews reputed all wars just that were undertaken by Divine order for the protection and defence of the Chosen People. A concept at once religious and national presided over the vitality of a people shut up within itself, which, in affirming its own religion, denied that of the surrounding peoples. The idea of the justice of war was barely perceived by the Greeks; it never penetrated their thought. The gods assisted the belligerents *hic et inde*, and the stronger of the two sides of gods and men allied won the victory. For the Romans the *bellum justum et pium* was a war preceded by the appropriate rites and formalities corresponding both to the *jus gentium* (*justum*) and the propitiation of the gods (*pium*).

It cannot be denied that at the base of the external formalities of the Romans and the theocratic conceptions of pre-Roman antiquity was the idea of justice in relations between people and people. Yet such factors as force, dominion, and vengeance predominated. Relations were at a minimum and

peril of conflicts at a maximum, so that instinctive and natural self-defence was rendered surer by arms. Justice was, therefore, a matter of formalities, inasmuch as the norms for war were external, procedural, propitiatory, and never interior and moral.

On the rise of Christianity and its penetration of the Roman world, the first problem for Christians was neither social nor political, but individual, moral, and religious: was it lawful for Christians to bear arms as soldiers of the Empire? In the Early Christian period this problem was considered chiefly from the point of view of the purity of religious faith, and the peril a soldier ran of having to take part in the pagan rites, but the fact that the shedding of blood—that is, the slaying of men—conflicted with Christian meekness was not without significance. Therefore the military service of Christians was at once opposed and tolerated. Many soldiers became glorious martyrs. A rite was instituted for the purification of warriors, who at one time had been excluded from the Sacraments and the mysteries of religion. During the first three centuries the idea that all war was an act repugnant to Christianity was widespread. The current discriminating between just and unjust wars was late in forming and grew up with the recognition of the necessity of public society, which then coincided with the Roman Empire. This conviction became ever more widespread when the Empire was threatened by the barbarians. The Christians were accused of having weakened it by creating a rift in the ethical and religious field, by failing to observe the laws of the Empire, and by propagating principles of mildness, love, and equality contrary to the Roman spirit.

In this historical setting we must insert Saint Augustine's theory of Just War, the theoretical and historical basis of what was formulated by the canonists and schoolmen at a later period. St. Augustine proclaims the idea of war for a just cause, just intrinsically and not merely formally, representing resistance to violence and defence of law. Wars of conquest he denounces as acts of brigandage (*grande latrocinium*). Wars,

he maintains, must not be waged save of necessity, and, rising to an authoritative moral conception, he declares war to be the exercise of a punitive power against those who do evil.

The Augustinian theory penetrates the whole of the Middle Ages. His chief assertions are contained word for word in Gratian's *Decretum*, and though various Fathers and Christian writers, considering the moral and material evils produced by the continual wars, were inspired by religious motives to make oratorical attacks on war, the Augustinian theory entered into the Christian conscience of the age. This is the thorny and obscure period that stretches from the fall of the Roman Empire of the West to the time of Charlemagne. The defence against the barbarian hordes from the North and against Islam was a continuous and constant necessity, and Christianity became a constitutive element of the public society of the time. The Church could not fail to invest the chivalrous and military formations of nascent feudalism with her moral influence, could not stand aloof from the defence of the West, assailed as it was by so many enemy forces. But her action remained in the field of religious and ethical precept, seeking the appeasement of conflicting forces, the reform of barbarian customs into civil customs, and the unification of Western Christendom, more especially the better to face the Islamic peril. Thus she became a practical criterion of morality, discriminating between wars that were just and necessary, and unjust wars inspired by the spirit of conquest and vengeance.

The institution of the Truce of God, the religious rites of pacification and purification, and those of knightly initiation, the struggle against the Trial by Ordeal, the influence of the monastic orders, were all moral and religious factors capable of toning down the warlike spirit of the mediaeval peoples—a hotch-potch of races and stocks, of Latins and barbarians. Under this aspect the rôle of the Church was less the development of a theory on the justice of war than a moral and social practice contrary to the war spirit. This practice determined a trend towards war against Islam, and contributed to the

formation of strong political unities, such as the Empire of the Franks, which became later the Holy Roman Empire.

§ 41. The Augustinian idea of Just War begins to find theoretical formulation with the schoolmen and the legists in the period of the struggles between Empire and Papacy, when autonomous kingdoms and local lordships were in course of formation—that is to say, with the beginning of a cultured reflection on the historical facts of the time and of a political organization tending to define the boundaries of the various authorities and various organisms, Papacy, Empire, Kingdom, Commune, and autonomous bodies.

The petty endemic struggles between feudatories and overlords, the individualistic and anarchic defence exercised by adventurers and knights, the great Crusades with their lack of serious organization and determined by mob impulse, were yielding place to a more systematic feudal and military organization. The formulation of particular rights was becoming the object of a general theoretical construction through the rebirth of Roman Law, mingled with canon and feudal law. The theories on war, that of the schoolmen and that of the legists, remained distinct, the result of two different visual angles. The schoolmen studied the moral factors in the case and accordingly made the fact of war the object of subtle analysis, establishing when it was lawful, how chiefs and soldiers should conduct themselves, and what constituted just relations between belligerents, and thereafter between victors and vanquished. The legists, on the other hand, accepted the moralist findings of scholasticism, but considered war from the point of the view of political organization of the time, dealing with the powers, limits, and force of authority, and especially that of the Pope and the Empire.

The Just War theory, as it was formulated in the XIIIth to XIVth centuries, cannot be understood save against the background of the age, and with the significance it derives from its correspondence to that particular historical period. Those who

see in it only a systematic development of the thought of St. Augustine leave the facts out of count, and consider almost exclusively their moral aspect. But the positions of thought are very different, even though their moral and theoretical background might be the same.

When the schoolmen of the XIIIth century made the first condition of a Just War its proclamation by competent authority, their intention was to deny the right of war to all grades of the feudal hierarchy that did not constitute a sovereign authority or act with the authorization of a sovereign authority. The period of instability of public powers, of confusion of attributes, of chivalry and individualism, of communal struggles, when what was sought was an exact definition of public authority and the fixation of a hierarchy leading up to the Pope and Emperor, was passing away. We cannot fully understand scholastic thought without referring it to that of the legists, against the background of the discussions of the time. As we saw in Chapter I, in studying the development of the International Community, the tendency was then to seek the peaceful unification of Western Christendom; while the development of social forces was bringing forth the kingdoms, republics, and lordships, all demanding autonomy and absolute sovereignty.

From this point we find among legists two currents of thought. The first, who upheld that Christendom was all one family, denied the existence of any right of war between the various parts of Christendom, and affirmed that according to the law (Roman Law) only those on whom the Roman people declared war, or who declared war on the Roman people, could merit the title of "enemies"—that is, the status of belligerents—and be treated as such. Any others were "vile brigands"; hence all the wars that were fought every day between the various princes were *per se* unjust. (See Ostiensis, *Summa Aurea*, L. 1. rub. 34. ii.) The second current admitted both that certain kingdoms and republics were independent of the Emperor (France, Castille, England, and Venice), and that non-sovereign feudal princes had the traditional right to make war without per-

mission from their overlords. The question was interwoven with that of the powers of Pope and Emperor. Dante, in his *De Monarchia*, and, later, the famous Bartolo, who taught in Pisa and Bologna in the XIVth century, and the whole school of Italian and German legists maintained that the Emperor of the Romans held rightful dominion over the old Roman Empire —nay, over the whole world; thus wars between Christians should have been averted, leaving only those against the infidels. The distinction between the Roman people (including the kingdoms of France, England, Venice, and Castille) and foreign peoples is to be found also in St. Antoninus of Florence, the famous scholastic moralist of the XIVth century. Bartolo affirmed: "*Si quis diceret Imperatorem non esse dominum et monarcham totius urbis forte esset hereticus*" (1. hostes).

It is very interesting to see how the legists considered the relations between Christendom and the infidels. Ostiensis affirmed that all wars against infidels were just, and very many others were of the same opinion, among them the famous De Lignano and Martino da Lodi. They even reached the point of maintaining that infidels had no right either to possess property or to form a political society of their own, and hence that Christians might invade and occupy the lands of the Saracens, treat the owners as barbarians, and subject them to their dominion. This opinion was combated by Pope Innocent IV, although in that time it was the more commonly held. Innocent himself admitted Papal jurisdiction over the infidels with the right to punish them if they infringed the laws of nature, and in such cases the Pope claimed the right to declare war on them. If the infidel peoples and not their King were afterwards to be converted to Christianity, the Pope claimed the right to dethrone their rulers, to release the faithful from their oaths of allegiance, and, in case of resistance, to make war. The Imperial jurists attributed the right to make war on the infidel to the Emperor alone, but Innocent IV reserved certain cases in which war might be declared by other princes, with particular rights to defend, as in the case of Spain. This theory was

rediscussed on a new basis after the discovery of the New World. In the mediaeval setting it represented the effort towards the religious and political unification of Christendom, and towards its extreme defence against the peoples of Islam who from Asia and Africa had overflowed into Europe.

In those days, then, the problem of the legitimate authority for declaring war coincided with the problem of the political-ecclesiastical and feudal organization of the time, and the conception of a unification of Christendom. Whereas in the time of St. Augustine the authority for the declaration of war coincided with the Roman Empire, and in the period following the Middle Ages, from the XVth century onwards, with the rights of absolute Sovereigns. The concept, therefore, of this competent authority discriminates not merely between public and private war but between the religious positions of the faithful and infidels, between the grades of the feudal hierarchy, between vassals and overlords, and between the highest world authorities, the Emperor and the Pope.

§ 42. The second condition of a Just War is that it should have an adequate motive grounded on justice. In Gratian's *Decretum*, in Isidore of Seville, and in the various collections of decretals, the concept of a Just War and its causes is thus expressed: "*Justum est bellum quod ex edicto geritur, de rebus repetendis aut repulsandorum hostium causa.*" St. Thomas expresses himself as follows: "*Justa bella definiri solent, quae ulciscuntur injurias, si gens vel civitas plectenda est quae vel vindicare negligerunt quod a summis improbe factum est, vel reddere quod per injurias ablatum est.*" This formula is approximately accepted by all the schoolmen and derives from the thought and words of St. Augustine: "*Nam et cum justum geritur bellum, per peccata et a contrario dimicatur*" (*De Civitate Dei*). The formula of Ostiensis adopted by the legists on this point does not differ from that of St. Thomas, but the legists seek to specify and classify wars as just or unjust, according to stereotyped concepts. They say that there are seven kinds of

war: (i) War against the infidel, known as the *Roman war*, which is always just. (ii) Judicial war, waged against rebel subjects by order of the prince—just. (iii) Presumptuous war, waged by rebels against the prince—unjust. (iv) Legitimate war, waged to vindicate a right—just. (v) Rash war, waged against right—unjust. (vi) Voluntary war, waged by an inferior lord without authorization—unjust. (vii) Necessary war, in defence against an invader, in virtue of natural law—just. (Vanderpol. n. 28.)

Even on this point the visual angle of the schoolmen does not coincide with that of the legists. The first tend to estimate the causes of war from the point of view of their moral and inward bearings; the second from that of authority and organization. Indeed, one of the basic points of the schoolmen of the time, which can be traced to St. Augustine, is the idea that an offence is concomitant to the cause of war. St. Thomas says: "*Causa justa, ut scilicet illi qui impugnatur propter aliquam culpam inpugnationem mereantur.*" He who opens war is likened to a judge, because there cannot be justice without judgment and without vindicatory power—that is, punitive power. This idea is to be found in Gratian's *Decretum*, in St. Isidore's *Book of Origins*, and in nearly all the writers of the Middle Ages. It is clear that this concept must be considered together with the whole organization of Christendom and the claim to the right to rule the world as heirs of the Roman people; it is then easier to see its bearings, yet even outside that social setting the idea of judgment and vindicatory justice is intimately bound up with the other two concepts of just cause and legitimate authority, so that the enemy against whom war is waged can only be at fault and beyond the pale of law.

The two concepts above mentioned, just cause and culpability, entail two consequences of great importance to mediaeval theory. The first is that only for one side can a war be just; the second concerns the position of the guilty and the rights of restitution and indemnity. On the first, St. Augustine is explicit. The justice of one side is created by the iniquity of the

other. St. Thomas is of this opinion when he speaks of a malefactor on one side and a judge on the other. The opinion of the Middle Ages on this point was so certain that there are no traces of discussion, as in the modern period. As regards the second consequence, both theologians and canonists of the Middle Ages allow that the side fighting for a just cause has the right to punish the guilty side. The right of punishment is a different right from that of spoils (the right to consider goods seized as payment for injuries received), and from the political subjugation of the vanquished. For a considerable period of the Middle Ages it reached the pitch of a right to enslave prisoners of war, and even to sentence the guilty to death. Even the sack of an enemy city was held to be included in the right of punishment. And while in other cases a distinction was made between innocent and guilty, between non-combatants and combatants, in the case of the sack of an enemy city the solidarity in guilt of the whole population was assumed (V. Cajetano). There were schoolmen who denied such rights, admitting the sack of towns only in cases of real necessity, and esteeming it not a right but an iniquitous act. On the other hand, all the rights of victory were denied to those making war unjustly, whether that of retaining the lands they had seized, of taking possession of the spoils, of enslaving their prisoners, or of punishing the enemy. The concept of guilt was thus related to that of justice and formed the discriminant criterion of the whole of the right of war.

The third condition concerned the aim of the war—that is, the restoration of order and peace. Thus war for the sake of conquest was condemned, together with wars of vengeance or resulting from family feuds, and wars conducive to disorder and further war. For the schoolmen the concept of order was inseparable from that of justice, and the concept of peace inseparable from that of order, since there can be no order without justice and no peace without co-ordination and subordination among the various sections of society. This idea is closely related to that of authority, the centre of order, and

an element of peace. The whole theory was asserted in contradiction to reality, at a time when the feuds of families and factions and the lust of conquest were normal war motives, and such wars and vendettas led to new and worse wars and social disorders. The standpoint of the schoolmen was, therefore, moralist and pedagogical. Thus St. Augustine affirms with force: "*Nocendi cupiditas, ulciscendi crudelitas, implacatus atque implacabilis animus, feritas rebellandi, libido dominandi, et si qua similia, haec sunt quae in bellis jure culpantur.*" St. Raymond of Pennaforte (Summa R. 2, V. 12) declares explicitly that no war is just that is inspired by hatred, vengeance, or greed, but only that which is inspired by piety (religion), justice, and obedience. St. Thomas says that those making war must have a right intention—that is, to do good and eschew evil. Hence the same Doctor writes: "*Illi etiam qui justa bella gerunt, pacem intendunt: et ita paci non contrariantur, nisi male, quam Dominus non venit mittere in terram*" (Matt. x).

From this concept is derived another, that no just war can be fought save in case of necessity. St. Augustine's phrase (Ep. 305 to Bonif.) which has passed into Gratian's *Decretum* (Causa XXXIII) is conceived as follows: "*Pacem habere voluntatis, bellum autem debet esse necessitatis, ut liberet Deus a necessitate et conservet pacem.*" In nearly all the theologians and legists of the time this idea of necessity or of urgent necessity is bound up with that of peaceful aim and just cause, so that in their theories and in the moralist and legal consciousness of the time these are inseparable. Hence the fourth condition—that is, the absence of any other adequate means for the purpose. The theologians insist in the use of all the peaceful methods—negotiations, recourse to higher authority, to King, Emperor, or Pope—that the Middle Ages afforded to belligerents.

As a whole the moralist theory of the right of war, based on the criterion of intrinsic justice as it was understood in the Middle Ages, both as a relation of equation between belligerents and as the social basis of the community, prevailed over the

current of the legists, who sought to base it on external and social authorities, whether political or religious. Yet while the schoolmen lacked a truly objective norm of justice and had to have recourse to the concept of necessity, the legists differed among themselves in their estimation of authority, as regards its Sovereign and independent character. They thus tended to make either the civil order (the independent Sovereign or the Emperor), or the religious order (the Pope), or else a combination of the two, an absolute criterion in respect of both Christians and infidels. The Middle Ages closed leaving the fundamental problem unsolved—who can judge whether a war be just? This problem arose in its entirety in the following period.

§ 43. After the XVth century onwards scholastic thought subsisted, but in a changed environment. The meaning of the theory of Just War had moved to new horizons. The concept of sovereignty replaced that of a gradation of authority crowned by a supreme authority. The Emperor was considered a sovereign with certain well-delineated and well-defined additional rights, but with no right at all of interference in sovereign States. The Pope had only religious rights, with an indirect power in temporal matters through their connection with the spiritual good. The right of war was vested in the Sovereign in an absolute and independent form. In the Middle Ages the estimation of the justice of a war was not merely reserved to the Sovereign, but was vested in all the various orders of society. Vassals, in virtue of their semi-autonomous position, and Free Cities, Guilds, Universities, Churches, Monasteries, in virtue of their immunities, might judge a war unjust or inopportune, and, even in the heart of the warring kingdom, remain aloof from it. In the regime of absolute States this instinctive and autonomous participation in appreciating a war disappeared, both in its hierarchic and authoritative and in its popular and spontaneous forms. Little by little such appreciation became the exclusive attribution of the Sovereign. Hence

the moralists felt the need to face various questions of which we find no sign in the Middle Ages.

The first concerned the Sovereign. What should he do if he doubted of the justice of a war? The answer should be, and commonly was, a negative one—that he should then refrain from making war. But new elements crept in which show the trend of the time. Suarez opined that if the Sovereign, after a thorough study of the reasons for war, were to judge that right was more probably on his side than on that of his adversaries, he might declare war. Navarro and Victoria inclined to a similar opinion, which was contradicted by Vasquez. The tendency to justify even wars, the justice of which was doubtful, towards the end of the XVIth century led to the application of the Probabilist Theory of the celebrated Molina. Molina overturned the whole of the scholastic theory by maintaining that a war might be just for both sides—that is, for the one formally and substantially, and for the other only formally. Molinism, as a system of extrinsic probability applied to moral actions, was opposed because of its laxity, but the criterion of equi-probability, or of greater probability as opposed to less, remained, and the opinion that a war might be just for both sides had considerable results. This was only natural when all moral judgment as to the reasons for war was entrusted to the conscience of the prince. Hence the corollary—the subjects must assume the justice of a war declared by their Sovereign. They could not know and examine the reasons for war, for these the Sovereign was under no obligation to expose, even to the grandees of the State. Only when a war was plainly and flagrantly unjust should they refuse their participation and obedience. But when it came to fixing the terms of the evident and flagrant injustice that would create a conscientious problem for subjects and soldiers, there were only extrinsic elements to go upon, which in substance resolved themselves into the authority of the prince.

The transformation of scholastic thought into humanist thought is still clearer when one notes that the moralists and

canonists of the XVIth and XVIIth centuries, in reproducing the Thomistic doctrine, omitted the condition of right intention and the aim of order and peace. Not that they did not share these ideals, but as realists they resolved right intention into justice of motive, and justice of motive into the conscience and authority of the Sovereign. Under this aspect the right of the Sovereign or of the State (which were identified in the legal thought of the time) was objective and genuine, and hence transcended even such moral factors as the guilt of the enemy. The relation that was essential to a Just War for the schoolmen of the Middle Ages—guilt on one side and right of punishment on the other—almost disappeared. Instead, there was a prince making war as judge and lawful avenger of disturbed order. The possibility that a war might be just for both sides gave war the character of an extreme means of settling a disputed right. Hence a minute casuistry concerning the motives of war, estimating the rights of the reigning Houses, treating legal and practical doubts, and the manner of resolving them, and so on. Such discussions were at once speculative and practical; their background was the formation of the absolute States, and the continual dynastic or religious struggles. The moralists of the time sought, therefore, on the one hand to reinforce the moral elements opposed to war under the new aspect of casuistry, and on the other to support the formation of the right of the absolute State, which was then developing independently both of extraneous powers, such as the Emperor and the Pope, and of intrinsic criteria; they were thus half unconsciously influenced by the theory of the reason of State.

§ 44. The thought of Machiavelli may be expressed in these terms: *War is just when it is necessary*. The schoolmen, on the contrary, upheld the opposite thesis: "War is just when it proceeds from just causes, and at the same time is necessary." The latter did not make justice and necessity convertible terms, but made necessity only one of the conditions of justice. The schoolmen, moreover, especially the moralists of the

Renaissance, laid on the Sovereign the responsibility of evaluating the motives determining the justice and necessity of a war. For Machiavelli the Sovereign's duty consisted in evaluating only the elements of necessity, and in these the elements of justice were comprehended and neutralized. Nevertheless, for both the problem was deeper seated—how to find the measure of justice and necessity? When is war necessary? The concept of necessity cannot be separated from that of the aims of a war, and these aims may be estimated either politically or morally. Here is the central point of divergence between the two theories. The moralists, while entrusting the estimation of the justice of a war to the Sovereign, made it a question of moral law. Machiavelli made it a question of the law of utility, in function of the advantage of the State and of the monarchy. And while the moralists, with St. Thomas at their head, sought in politics the *bonum commune*, the jurists and publicists of the Renaissance sought the interest of the prince or of the dynasty, with which the well-being of the community was identified.

The transition from one to the other theory is not as difficult as may seem at first sight. It is true that the terms *per se* are inconvertible, but it is also true that the quest of an objective measure, both of the justice of war and of the common good as the aim of the policy of a State, may result in empty words if these are considered apart from the actions and reactions of social life—that is, apart from the concrete of history. We have seen how the theories of the Just War in the Middle Ages corresponded to two concrete facts that reflected their practical value—that is, a gradation of feudal and immunitary powers leading up to Emperor and Pope, and the permeation of public institutions and the social structure by the moral influence of the Church. As we have seen, the same theory no longer corresponded to reality in the period of the absolute States and sovereign Houses, when the various courts of public conscience, feudal and politico-religious hierarchies, free and autonomous bodies, had disappeared, and hence all judgment

as to the justice and necessity of war, all estimation of the common good, was entrusted to the uncontrolled conscience of the Sovereign.

Thus objective criteria gave place to subjective. The measure of such estimation in the Middle Ages was the product of the collective conscience; in the Renaissance, of the individual conscience. The patrimonial State of the time resolved itself into the reigning House, the consolidation and aggrandizement of which became inevitably the objective criterion of the Sovereign's judgment. Such was the background of the time. The theory that "a war was just when it was necessary" was its adequate expression and has all its historical significance.

Now, when is war necessary? According to the Just War theorists necessity resolves itself into the absence of all other means of settling a dispute between two or more States. It is thus a question of means and not of ends. According to those upholding the theory of War for the Reason of State, it is, on the contrary, a question rather of ends than means. The difference is plain. For the former, the Sovereign has no choice between war and other means. For the latter, necessity and utility are convertible. Hence Machiavelli's dictum, that "war is just when it is necessary," is completed by another, "war is necessary when it is useful to the State". And since the phrase is too frank, another and more euphemistic one takes its place: "War is just when it corresponds to the Reason of State."

The expression "Reason of State" holds something at once rationalistic and cryptic. It was the phrase that suited the age of absolute Sovereigns and dominion of reigning Houses, and takes the place of the scholastic *bonum commune*. Indeed, the common good was made convertible with Reason of State, inasmuch as the latter became its measure. The transition from the social concept of the State to the individual concept of the reigning House or Sovereign was in the logic of the thought of the time. The State was held to be the patrimony of the Sovereign, and the Sovereign considered himself such by divine right. Hence the famous phrase of Louis XIV, "*L'État*,

c'est moi!" is no rhetorical and empty sentence but corresponds to the conscience of the time. The tendency to synthesis leads to the creation of central points of reference, which may become real or fictitious measures of the equation of the good of the many and the good of one or of the few; and this at that time corresponded to the tendency to centralize the State in an absolute Sovereign, who thus became the living measure of the common good, of justice, law, collective utility. The moralists appealed to his conscience and the politicians to his ability as a Sovereign. He judged of the "justice-necessity" of war and of the "utility-necessity" of war; and he replied that war was just and necessary because it was required by the Reason of State. The whole history of those centuries is contained in that answer.

§ 45. The theory of Hugo Grotius is a point of transition between the pure theory of the Just War and that of War for the Reason of State, with the addition of the theory deriving war from natural law. We have given in Chapter VIII our reasons for denying that war corresponds to natural law, and our view of the terms of natural law. But in its historical setting Grotius's theory has an indisputable value, inasmuch as he seeks to give the right of war a legal basis, withdrawing it both from exclusively moralist appreciation and from the arbitrary estimation of the politicians. Grotius's idea is to be found also in the moralists of the XVth and XVIth centuries. Nevertheless, while these, and in particular Suarez, sought to restrict the scope of natural law, maintaining that the *jus gentium* was only conventionary and traditional, and hence not to be confused with natural law, Grotius extended its scope, making the *jus gentium* coincide with natural law and considering it as its direct consequence. Thus, while Suarez held that war is an historical fact, and hence in a given social order may become unnecessary and disappear, Grotius considered it as corresponding to nature and social life. Moreover, Grotius, in agreement with contemporary moralists, contradicted the mediaeval

legists by maintaining that to make war was the right of sovereign States; and, on the other hand, opposed the moralists by denying the possibility of any objective criterion of justice. He allowed that the State had the right to take warlike action to avert a threatening peril, and that the criterion justifying war was the interest of the State. This criterion, indeed, he included in the cases of just war, which he extended, as the moralists, his contemporaries, were doing, to embrace nearly all the types of war then current. Grotius's concept, which has a fundamental value in the development of successive theory, is that war-causes must have a preponderantly legal significance, and be appreciated as such. Just war is war in defence of law; unjust war is war in violation of law. War becomes a legal institution based on legitimacy, which, in determined cases, may be recognized in respect of both parties of belligerents.

In substance, Grotius's theory is less objectionable than Machiavelli's theory of the Reason of State. It prevailed over the Just War theory. In Grotius, justice is more or less taken for granted, though transformed from a moral into a legal factor. Hence the idea that war is an extreme but normal method founded on nature, suitable for the settlement of legal disputes between States, apart from any intrinsic ethical significance of motives and aims which are considered to be implied by the legal significance of war. This theory became predominant in the following centuries and provided the starting-point for the naturalist and positivist schools of international law. The expression "Reason of State," which referred historically to the period of absolute monarchies, was translated into that of "National Interest". The cryptic significance of the first was succeeded by the vague sentiment of the second, but the utilitarian criterion, of a mediate or immediate advantage to the nation, remained fundamental, even in the presence of the ideals of justice and right which formed its common and usual expression.

Indeed, the concept of the modern State has become broader,

so as to comprehend people and nation as effective forces. The idea of the common good has been widened, and good and law have been founded on human personality. But the limit and measure of every advantage, of all common good, of all justice, continues to be the State, and, in the absence of a monarch by divine right, the State has inherited all his formal and substantial powers in the name, first, of the sovereignty of the people and then of the nation as a moral personality. The step made by Hegel is only a logical consequence—the conception of the State as the fount of morality, as the "Ethical State". Under this aspect there could no longer be any objective morality limiting the right of war to a category of Just Wars. The appeal of the moralists to the conscience of the Sovereign before deciding upon war no longer held any significance. The discussions whether a war that was just for one side could be just for the other no longer counted, since all judgment as to ethical values was identified with the ethical *raison d'être* of the State; for this *raison d'être* war became an actualization—that is, a manifestation of its peculiar morality.

The transition in the XVIth century from the theory of the Just War to that of war for the Reason of State was a logical and historical fact corresponding to the formation and growth of the absolute monarchies. In the same way the transition from the theory of the Reason of State, through the theory of the jusnaturalists and positivists to that of the Bio-sociological War, corresponded to the formation of the modern State, the democratic and national State that is considered as an absolute datum of law, ethics, and human purpose.

§ 46. War is always willed by those who feel themselves the stronger and is endured by those who believe themselves, or are believed to be, the weaker. The first seek legal and moral pretexts to justify the real cause of the war, which is a tendency to dominion born out of consciousness of strength transmuted into consciousness of right. The second may appear to be in the wrong because they have given rise to secondary motives

for war, which are, however, never its real causes. For the bio-sociologists war expresses the force and dominance of a tribe, class, city, people, nation, or race, and is thus a typical moment of social life, in the same way as force and dominance are typical moments of individual life.

When the jusnaturalists justify war by appealing to natural law they express in legal terms what the positivists express in terms of social biology, and derive likewise from an intimate law of nature. Whether war means the violent and primitive encounters of barbaric and nomad peoples, contending for the possession of a piece of land or a way of communication, or whether it means the colossal encounters of to-day, with advanced and developed organization and all the reinforcements of science, it is always the same phenomenon. The types of war vary with the development of human society, but the significance of war remains unchanged in its fundamental elements; it is not only the *suprema ratio* of the right of the strongest, but it manifests the continual progress of human energy.

From this idea sprang the theories of Treitschke, Bernhardi, Hartmann, and the German school in general. For them military organization is the sign of a people's economic and moral progress, and its title to a right of hegemony over other peoples. Empire, in the strict sense of the word, means the convergence of all economico-social forces in military organization, as the source of a people's activity and power. The Roman Empire was the most noted type of pre-Christian antiquity. The mediaeval Empire could not attain stability nor fulfil the end for which it arose because of its want of a strong economic structure, and hence of a real military organization. The Middle Ages were poor and had no finance, and the Crusades failed for this reason; chivalry took the place of armies, and these, where they existed, were rather bands of robbers than true armies. As the economy of Europe developed, strong States were created, and with the improved and corresponding development in economy and militarism, war became the mean of the hegemony of dynasties and States. War for hegemony,

imperial war, and national war, are the three types of the Bio-sociological War of modern times, inasmuch as they represent the various phases of military and economic organization among modern States. In other times wars had other features and other names, but the principle remains identical—the element of dominion. When the oceans were unexplored and untraversed, such an element might be confined to the Mediterranean, but, once the oceans had been crossed, it extended over them. The Armadas represented a military organization for the defence of the fleets, for commercial penetration, and for the conquest of colonies. Yesterday neighbouring peoples were subjugated, and foreign domination was imposed on outlying provinces. To-day economic and political domination may be established even without the subjugation of peoples. But this continuous displacement of politico-economic centres cannot come about without a military capacity, ready to dominate in a determined moment and in a determined sphere.

According to this bio-sociological theory, the military organization of States will never come to an end. States without a military organization, like the States that have been neutralized either voluntarily or by international agreements, enjoy an advantage in organization over the other peoples, who act as international police, for the sake of their own power. But the military organization of a certain class of States is perennial and ever developing. Indeed, war is not a continuous activity on the part of humanity. It represents merely the moment when a periodic crisis is overcome, when a centre of dominion that has lost its strength yields place to other and stronger centres, and these, therefore, overthrow it. Hence for peoples with potentialities of expansion and dominion, armaments—that is, organized force—must be permanent. So long as the United States of America had yet to consolidate their political autonomy and had, in their territory, plentiful scope for the development of their economic activities, they were a people shut up within themselves, peaceable and anti-militarist. When their domestic

security was assured, and their economic development had reached saturation-point, they had to expand. As a result, war with Spain, the occupation of the Philippines, the occupation of the Carib Islands, war with Mexico, their entry into the World War, naval armaments. Therefore, on the basis of this theory, general disarmament is a Utopia, whereas a reduction of armaments is in accord with the economic law of "the greatest result by the smallest means", and may, therefore, be realized. But this does not do away with such factors as the hegemonic nations, Imperial tendencies, and national developments, corresponding to the positions of the various States and various races. For these even in a restricted military regime may seize the right moment to resort to a trial of strength in order to save their dominion, or to win it when they feel themselves mature enough to lay hold of it.

The bio-sociologists consider the organization of the League of Nations from two points of view. Above all, as a pause, comparable to the long truces and treaties of pacification in the past. Every age has its forms and its formulae. In the Roman period there was the *pax romana*; in the Middle Ages, the Truce of God; in the modern period, the treaties for balance of power; to-day, the Covenant of the Legaue of Nations and the various Locarnos. These periods bring forgetfulness of the evils of past war, enable convulsed or shattered economic systems to be reorganized, allow the various military organizations to be reordered and developed, and give time for the new generations to become apt for war. And wars will return when hegemonic, imperialist, or national motives have ripened the seeds of a transference of dominion from one centre to another.

What is the basis of this theory? The answer given is human nature. What is its proof? History. Its rationality? The psychology of force. The advantage to be derived from it? The survival of the strongest, and the formation of peoples morally and physically strong. Its social significance? Dominion, as a factor of human centralization and unification. Dominion is expressed by the moralists as Authority, by the jurists as Law,

by the politicians as Sovereignty. No dominion is acquired without force or maintained without force, and no force is rational if it is not organized; and no organized force remains unarmed, but must be used when the moment comes, when a section of society feels in itself the power to wrest dominion from another. War is its phase, its crisis, and therefore war is above ethics and above right. It is a Bio-sociological Law.

CHAPTER XI

CRITICISM OF THE THREE SYSTEMATIC THEORIES

§ 47. We may roughly classify the three theories by saying that the theory of the Just War is held instinctively by the masses, the theory of War for the Reason of State by the ruling groups and politicians, and the theory of Bio-sociological War by wealthy, powerful classes and peoples and by nationalist and Imperialist currents. From the historical point of view, the Just War represents the moral theory of the Middle Ages; the War for the Reason of State, the juridical theory of the Renaissance; and the Bio-sociological War, the theory of modern positivism. All three have a mystico-religious substratum. For the first appeals to conscience and objective criteria of justice, and moulds itself on Christian thought, whereas the second finds as ethical boundary in the concept of the Monarch by Divine Right or the Sovereign People, and the third in the Ethical State, or Nation, conceived as an Absolute.

These indications of the diffusion, historical position, and ethical bearings of the three theories allow us to estimate their profundity, scope, and interaction. No single one of the three has ever been felt and upheld in its typical form without some contact and infiltration, whether conscious or unconscious, of the other two. Underlying all discussion and theoretic formulations, and, above all, in the course of an historical process of which the chain of wars has stained the whole world with blood, we always find some concrete instances of all three, for each one corresponds to a partial tendency of the human spirit and to the partial adjustment of our ideas to reality.

The effort to justify war is instinctive among all belligerents in all wars, not only in view of the effect of such justification on other peoples, but because of the inborn need of men to justify their own acts; all the more if those acts are public and, as in the case of war, entail terrible consequences. This justification may range from a meticulous and subtle quest for just

motives and purposes in a war to the more convenient and less effective plea of State advantage, or to the theory that dominance by force represents an insuperable instinct. And such justification runs through all these pleas and theories as a factor supporting the tragic conclusion that war, as the extreme method of settling disputes between peoples, is fatal and inevitable.

The criticism of these theories may start from various standpoints. For ourselves the chief of all is that of the correspondence between theory and practice—how, and how far, has war exemplified the specific elements of these theories? But there are also other standpoints to be taken into account: the intrinsic logic of such theories taken in themselves as apart from the historical process, and their logic as embedded in the historical process. Lastly, we propose to add certain remarks on the contradiction between the concept of morality and that of war, and the various solutions of the problem.

How far does the theory of the Just War correspond to the practice? The fundamental difficulty here lies in the concept of justice, its objectivation, and appreciation. The painful efforts of all the theorists to find a measure of justice shows that such a quest lacks practical value. The measure may be provided by necessity; but justice cannot be identified with necessity. Necessity may arise in case of injustice, as when one State is attacked by another because of a violation of right and wilful refusal of reparation. The attack creates a state of necessity, but this is the result of the violated right and refusal of reparation. The causes of wars, not the state of necessity, ought, therefore, to be first considered. We have seen (Chapter VI) how the causes of war are not true causes, in the sense that they do not directly entail war. Thus the examination of the justice of a cause does not go beyond a juridical and moral appreciation. The state of necessity is only created when there is the will to create it. From this point of view the injustice might be thought to lie always with those who will a war, and justice with those upon whom it is imposed. But this conclusion

would be excessive; for, on the one hand, war is never willed for its own sake, and is never accepted, on the other, unless some element of will, proximately or remotely, enters into it.

It is needless to insist farther on this theme, which we have already studied. It was expedient to mention it here in order to note the fact, constant in the whole history of war, that all belligerents believe in the justice of their own cause and in the injustice of that of their opponents. As a psychological phenomenon this is significant, and is an instance of the workings of will on reason. Thus, the more voluntary a war, the stronger do the reasons for its necessity and justice grow in the eyes of its promoters, and the more a war is necessary and just, the slighter is the part played by the will of those who accept it. War takes on the colour of justice from the most dissimilar motives, but these are always raised to an ideal plane—love of the flag, defence of freedom, defence of fatherland, of religion, of civilization. These motives are present for both sides, even when two diverse civilizations are engaged, as in the wars between Christians and Saracens, or between the Spanish and Portuguese and the Indians.

In view of the difficulty of any real estimation of war-causes, whether remote or proximate, the Just-War theorists had recourse to the judgment of the authority declaring war, whether this judgment were composite, as in the imperial, papal, and feudal Middle Ages, or rested with the independent sovereign. Such theorists, in substance, appealed to the conscience of the rulers. This appeal was not wanting in moral significance, but the cases when a moral inhibition to make war has served its purpose cannot have been many. Witness the long tale of wars, mediaeval and modern, European and colonial. Moreover, two sovereign consciences face each other, and each judges of the justice of its own cause, assailant and assailed alike. And although the scholastic opinion predominated that there must be justice on one side and injustice on the other, in practice those responsible for judging as to justice gave an equivocal answer, inasmuch as each belligerent claimed justice

for his own cause. Nor would the Sovereign fail to obtain replies from moralists and jurists *hinc et inde* confirming him in his belief that his cause was just. And the peoples, for want of direct information, were not in a position to form an exact criterion for judging of the justice of the war in which they fought. They had to take its justice for granted. There remained, then, only the posthumous judgments of historians. But, apart from the fact that these might be biased by partisan feeling, nationality, interest, or religion, such judgments were merely speculative and non-practical, for the simple reason that they were passed on wars fought and not on wars to fight.

The conclusion is lamentable. Neither necessity, nor causes, nor yet authority suffice to give the measure of the justice of war. In practice all wars *hinc et inde* have been presented and defended as just, or as presumed to be just. The correspondence between theory and practice has been nil, or nearly nil. The question of the justice of a war has merely served for controversial purposes among belligerents and neutrals, and, when war has ended, has helped to render the rights of the victors less irrational.

If we now proceed to consider the intrinsic logic of the Just-War theory we are met by a substratum of illogical elements. First, that war is an act of punitive justice. The idea of punitive justice comprehends that of: (i) an *offence* committed by the adversary; (ii) a *judgment* passed on this offence; (iii) the *moral solidarity* of the people with the true culprits, since in war the punishment falls on the people as a whole; (iv) a *punitive sanction*—in theory, the victory of the offended party over the offender, or, better, of the judicatory State over the guilty State.

The ideas composing this juridical complex are contradictory and hence illogical when applied to any political structure in which the State is the highest legimitate and judicial authority. Indeed, how can the guilt of a Sovereign or a Government be extended to the whole people without the unjust presumption of solidarity in guilt, when the moralists themselves admit that the people have no right to know the motives of the war,

and once war has been declared must take its justice for granted? It must be noted, moreover, that the idea of solidarity in guilt corresponds to a concept of rudimentary society, not of organized society. It is the primitive and barbarian concept of the solidarity of family, tribe, caste, and nomad people, and is based on factors no longer existent in civilized States. These are (i) the difficulty of organizing stable and secure defence among diverse and neighbouring peoples; (ii) an internal anarchy, rendering the central power, or whatever power may exist in the various primitive groups, ineffectual or less effectual, and therefore less responsible. In such cases the presumed solidarity of the community in the guilt of a few chiefs or members tends to inhibit, in so far as possible, offences against other peoples. Among organized peoples the concept of the extension of individual guilt to the whole population of a State, or of a presumed solidarity, has no foundation, whether legal, social, or ethical.

In the same way the idea that the Sovereign or Government in declaring war is executing a penal sentence cannot withstand the simplest critical examination. Suarez tries to develop this thesis, but without success. Instead of one authoritative judgment we find two judges, who are the two parties to the dispute, and neither of whom recognizes that the other has any judicial authority, and two contemporary findings, each with the same force. And if war is declared, each of the two ends by formulating a contradictory verdict, one of which cancels out the other.

The punitive sanction is not a reality at all but a hypothesis, since the so-called judge, who enforces his own finding, is no other than the monarch or State running the risk of war and liable to defeat—that is, to practical condemnation. And since any war declared by Authority is presumed just, there is always one party that must pass from the position of judge to that of criminal.

This want of intrinsic logic in the premises of the Just-War theory shows it to be inapplicable in an international organiza-

tion composed only of autonomous and sovereign States. On the contrary, it may become practically applicable in the presence of a super-State, an authoritative organization able to solve the problem of the justice of a war both formally and substantially. Hence this theory was an enticing one for the mediaeval legists and schoolmen who sought to organize Christendom in a hierarchy leading up to Pope and Emperor. And hence it held no logical reality for modern times when the sole fount of justice was the conscience of the monarch, and holds none for the present day, when the organization of the State, with its complete series of economic and political factors (§ 25), has disintegrated all responsibility and has diminished the significance of all individual action.

Of the whole theory of the Just War, all that remains alive is the ethical law of human actions, inasmuch as these may be moral or immoral. When this law is applied to the promoters of a war it provides a guide for their consciences, so that they may form the conviction of doing good or evil, of following or failing to follow a norm of justice and humanity. When this norm is carried into the Christian field it becomes impregnated with religion, and is estimated in the light of the teaching of the Gospel, which is charity, mildness, and justice. But the materialization of these elements in social life cannot come about until they become real institutions expressing the ethical significance of Christianity. The ancient or modern State assimilated certain elements of this Christian ideal, translating it into laws, norms, institutions, both in international law and domestic legislation. But in regard to war it has only ensured a purely formal content of guarantees and an external legal presumption. In war the ethical law of morality does not touch the true relationship of justice, but pervades human feeling in its tendency towards good in general, even though this good be ill-comprehended or mistaken, so that those who fight are not deprived of their belief that they fight and die in a just cause.

Such is the historical correspondence between theory and

practice—a correspondence the closer when, as in the Middle Ages, the civil and religious organization was such that the appeal to justice could be made in various courts, among the people and among the leaders. It was less close when, as under absolute monarchies, the appeal to justice was addressed to the conscience of Governments and Sovereigns. It is next to nothing to-day, when it is impossible for even the Church to raise a doubt as to the justice of a war, once a State is engaged in the struggle to its uttermost.

§ 48. The theory of the War for Reason of State dissociates ethical terms from juridical terms, and reduces the juridical terms to a formality. At the same time it establishes the interest and advantage of the State as the purpose of war. In order, then, to judge of the correspondence between this theory and the facts it is necessary to see whether such advantage or interest can be obtained by means of war. Now, this can never be proved. If war ends without victory or defeat for either side, its uselessness and the unprofitable damage it has produced are plain. If, on the other hand, it ends with the victory of one side, it has done damage to the other which also counted on victory. Often the victorious side suffers no less than the vanquished. In a general way war leads to the transfer of goods and wealth from one side to the other, but with a clearly disproportionate loss of men and goods.

The Reason of State is in substance devoid of true rationality, and throws the State into the hazard of a game from which it may emerge victorious or vanquished, with profit or with loss. But even victory in the long run sows the seeds of reaction and defeat, so that the war does not lead to peace but to fresh war.

It is true that by war States and Empires have grown great and developed, but in the same measure States and Empires have fallen through war. Thus the Reason of State does not find in war a sure and congruous means, but a means overreaching its own scope and its intrinsic causality. It is necessary

to go further to find the logical *raison d'être* of war. This the jusnaturalists expressed as a juridical requirement of human nature, as a means of guaranteeing a right which can only be secured by the use of force. We have seen that there is no truly necessary relation between these terms, but only a relation of historical contingency. Indeed, from the historical point of view it is possible to find an element of rationality in the theory of War for Reason of State, inasmuch as it corresponds to the period of the formation of the sovereign States in separate and antagonistic co-existence, to their growth, to their dominance and hegemony. The norm of the justice of wars was their power, and this expressed itself in the presumed advantage of the State, which resolved itself into a purely political value affecting the reigning Houses and dominant classes. Yet from this point of view the third theory might seem to possess a greater intrinsic logic.

Human nature demands a struggle. This is permanent. The appeal to force is conclusive. The Bio-sociological War transcends political reasons because States and Empires are born and die. It transcends ethics, inasmuch as the struggle is inevitable and necessary in itself and not as the result of circumstances. It transcends law, inasmuch as victory itself creates law. Men regulate the laws of war from age to age, and break the laws of war if by such breach they may gain an advantage in the struggle.

The bio-sociological theory, therefore, would appear to be not a theory of war, not the formation of ethical or legal norms and restrictions like the two preceding theories, but a dialectic explanation of all theories and of their meaning. As a theory it is at once historicist and anti-historicist—historicist inasmuch as it seeks to express various moments of the historical process, but in practice anti-historicist because its final appeal is to fatality. But fatality is not history, but, at the most, may be an historical premise. In order to explain this fatality one must have recourse to historical causes. Some, like Wrench, insist on differences of blood and race, seeking

to prove that war is not natural among homogeneous peoples, but only in the encounters of peoples of different blood. Others, like Marx, take their stand on the economic structure. Others seek the reasons for war in the development of society, in social determinism as leading to war. War is idealized by the nationalists and imperialists as a factor in life, civilization, and development. For them the *élites* of men, classes, and peoples are selected and develop by means of a physical struggle of which war is the highest expression, at once tragic and mystical.

In substance these fatalists and determinists are anti-historical, for they deny the intrinsic elements of human progress in the development of society, and they are illogical, for they would disintegrate man and annul the rationality of his actions. Indeed, it is impossible, according to their theories, to explain the historical process by which millenary institutions decline and are transformed and adapt themselves to new needs; so that we find, for instance, that in more advanced civilizations bloody sacrifices, polygamy, private justice and family vendettas, slavery, the duel, and the trial by ordeal disappear. We have already noted the tendency to the rationalization of the use of force as a basic factor of human progress, and the effort to secure the prevalence of rational factors over purely material factors. The fundamental mistake of the bio-sociological theory lies in confusing the terms of the human struggle with those of a struggle by means of force, and hence making of war an irrational and fatal law.

The bio-sociological theory corresponds historically to an important phase in world reorganization, the phase of great forces—economic movements of big industry and large-scale commerce, colossal banking concerns, the concentration of great wealth in a few hands, international workers' movements, huge armies representing armed peoples mobilized at will, colossal figures as in the last war when two worlds faced each other, vast colonial empires or huge federations or coalitions of States. Students of the question hold that this immense play of forces is regulated neither by ethical laws nor juridical

laws, nor merely by political vision, but by bio-sociological laws. Hegel's ethical unity, the State, is done for when it is no longer self-sufficient and arbiter of its own destinies, and is no longer the sole moral and political law. The unit has widened, human society stretches from one end of the world to the other. It is as the waters of the sea with its fatal laws of calm and storm.

§ 49. These three systematic theories cannot, from the abstract point of view, be confounded, and the specific factors of each are incompatible, but in their intrinsic rationality, and from the historical and concrete point of view, each is alloyed with elements of the others.

The fatality of war proclaimed by the bio-sociologists corresponds to the concept of the necessity of war maintained by the theorists of the Reason of State, and to the derivation of war from Original Sin in the theory of the moralists. All three theories appeal to nature: the bio-sociologists for the reasons of the social struggle, the State theorists to emphasize the juridical elements of war, and the moralists to discover its elements of justice. All three theories make war an extreme means of defence and assign to it sufficient causes. The moralists limit its causes to reasons of justice, the State theorists to national or State advantage, the bio-sociologists to the evolution of forces. Thus each of the three translates the common good to be attained into special terms, ethical (with the idea of justice), political (the advantage of the State), or social (the interest of the strongest). In fact, since war holds no other consequence than the right of victory and is recognized as such, and since this right cannot be contested in any other court than that of war itself, the interest of the strongest is convertible with the advantage of the victorious State, which affirms its right as justice. The formulæ are theoretically diverse, the result is that concrete result known as the *right of victory*.

Even the concept of war as ethical, which forms the basis

of the theory of the Just War, is not absent from the other two theories, inasmuch as the ethical qualities of war have no existence in themselves but are resolved theoretically and practically in function of the State or in function of the struggle itself. This method of appraising the ethics of war is incomplete, and arises from the desire to surmount the innate and fundamental contradiction between a given ethical ideal, whether Stoic or Christian, and war itself.

This problem is the more interesting in that it touches war in its intrinsic nature and in its historical correspondence to various forms of ethics and religion. The fundamental idea of ethics is afforded by the rationality of human actions. This intimate relation is felt by the conscience of each man, but whereas he has immediate perception of first principles, inasmuch as these are self-evident and require no discursive demonstration, he only perceives their applicability to human and social acts—that is, their concrete results—in the sphere in which he lives. The first principles thus appear outside time and space, facts of inner consciousness, always present because always known. But their contingent applicability is within time and space, embedded in the historical process of events and human institutions. Hence there arises a conflict between pure ethics and historical, or social and political ethics, between the intrinsic and the historical relations of rationality. This conflict philosophers have tried vainly to resolve by either dissociating or confounding ethical and historical terms. Religions, and Christianity especially, have carried their solution on to a different dialectic plane, allowing, however, the terms of the conflict to exist in reality. The Christian solution, however, acquires a force of its own, above all other.

Two typical examples will illustrate this idea—the family and slavery. Sexual relations demand a rationality of their own; this is felt as an ethical law by all men, but this ethical law materializes and assumes definite shapes, and is observed through and according to the materialization of the historical institution of the family. Outside the family the elements of

rationality lose their character, the irrational elements predominate. But the family itself has its historical structure, its development, from less to more rationality in all its relations. Thus from age to age breaches of the traditional or religious laws surrounding the family are considered offences and punished by society. Nor has the relation between the interior ethical law and the external historical law always maintained equally its own rationality. Thus in different ages different acts have been held lawful or unlawful. Yesterday polygamy was lawful and to-day it is an offence. Under such a regime as the Catholic, divorce is not admitted; under others it is admitted in specified cases. Once upon a time the father had the right of life and death over his son, which later was refused as an abomination. Side by side with the legal family there is often an illegal family; prostitution exists also. These are facts ethically irreducible to a line of rationality, condemned religiously, and socially tolerated or allowed, and under certain aspects regulated. The point at which rationality and religious feeling converge lies in the condemnation of evil; the point at which evil may be overcome lies in the legal recognition of given acts as evil, and therefore punishable; and social progress consists in the effort to eliminate evil. But till rationality and religion unite in recognizing that a given social fact is evil, the elimination of that social fact is impossible. Religion is necessary as a social premise and as the ethical application of rationality on a plane of obligations transcending ethics and society.

Between the primary ethical principles of human relations and slavery, as an historical fact existing for thousands of years, there is irreducible contradiction. Yet historical dialectics not only justify but strive to rationalize this institution as required by a given type of social, family, and economic structure. No wonder that ancient philosophers and Christian jurists upheld the various phases of slavery from the point of view of society, seeking to surmount the ethical contradiction! But this was never surmounted till slavery was abolished.

Time was needed, and struggles, and the transformation of institutions to achieve so much. But so long as the impossibility of reconciling slavery with ethical principles was not asserted, and that hence slavery was incompatible with ethics—that is, that it was an evil—its abolition was not possible.

Problems of this kind, conflicts between ethics and social institutions, have always existed and are always arising. What wonder if we read to-day in the works of certain sociologists, Christian sociologists especially, that they hold the wage system contrary to natural law? With the words "natural law" they are expressing in scholastic phraseology what we call inward ethics, or the rationality of human actions. The wage system is, in any case, a form of serfdom, and the capitalist regime a form of irresponsible wealth. It is not the fact itself that is anti-ethical but the human relation to which it gives rise. But till the human institution giving rise to this relation is reformed, this anti-ethical quality will not reach the pitch of creating culpability, and hence of determining precise responsibility. The contradiction remains external and is not felt as a fact of conscience; it does not become internal. For this reason we find the survival of slavery in Christian periods, when Christian masters owned slaves with the most tranquil conscience, feeling that they were not failing in their duties so long as they did not transgress the juridico-moral relations existing between master and slave under that particular regime; just as to-day many capitalists are, and feel themselves to be, Christians and morally in order, although possessing their irresponsible capital and employing their workers on the wage system. The elements of rationality and religion which must contribute to a solution of the terms of the ethical conflict are not yet ripe for a social solution of the capitalist problem, just as in past centuries they had not resolved a similar contradiction in the matter of slavery.

The very same, neither more nor less, are the terms of the ethical conflict in regard to war. War has existed and exists. It possesses evident elements of irrationality and injustice,

especially the injury and death of the innocent and of non-responsible peoples, and the right of victory that overrides the rights derived from human personality. The Christian religion, by requiring just causes, necessity, and a purpose of order and peace, has sought to rationalize war, but it is gainsaid by the facts. It is impossible to ascertain the justice of causes. There is no such thing as a real necessity of war. The purpose of order and peace is never achieved. In substance the Christian religion denies the social basis of war and allows the subsistence of only the ethical basis of defence. But this negation is not operative so long as there is no organization in which the social need for war may be peacefully transformed. The contradiction between ethics and war subsists and will continue to subsist as long as war does, just as the contradiction between ethics and slavery subsisted as long as slavery. When war is reputed a crime the contradiction will cease, even if war survives, just as the contradiction between ethics and sexual relations ceased when all sexual relations outside marriage and its purpose were reputed evil. And if in an involutionary process the family were to disintegrate and some other sexual relation become socially admitted—the aim of the exponents of "free love"—then the conflict would be renewed in spite of any political convention or legislation to the contrary.

Certainly the ethical conflict created by an irrationality of family relations is clearer, for the Christian ethic with regard to this institution has remained unmoved since the preaching of the Gospel, and because here rationality presents itself in terms of greater evidence the stronger the instincts to the contrary. On the other hand, the adequation of politics and ethics has almost always been difficult without the effectual intervention of religion. For this reason, before the appearance of Christianity, religion identified itself with both the family and the politico-ethical unity; and, indeed, the political power, with all its good and evil, expressed itself in religious terms. All powers were then at bottom theocratic or tending towards theocracy. The conflict was thus non-apparent inasmuch as

there was no true religious autonomy to render its terms visible. Since the coming of Christianity this has no longer been the case, for Christianity, by expressing ethical and truly rational laws in religious terms, has ever continued to discover antinomies and contradictions. And as these are historically insuperable without the transformation of institutions and social laws, so in the Middle Ages Christianity sought to resolve them by becoming itself a social, economic, and political part of the life of the time while remaining a religious force. But to resolve the contradictions of the past means in history the creation of new contradictions for the future, since human institutions never achieve a complete rationality. Hence the endeavour of the modern era has had two foundations: the political separation of social life from the Christian religious organization, and the utilization and assimilation of the ethical laws of Christianity, taken by themselves in their rationality, in the social organism. This attempt, which in modern terminology is known as *laicization* or secularization, restates the ethical conflict in terms of rationality apart from religion. Hence, while it may reach specific practical solutions, it renders the conflict less soluble in theory.

As regards war, once the Christian theory was abandoned as ethically irreconcilable with the permanence of the phenomenon of war in the world, there remained only the solution offered by positive law—the legal regulation and practical limitation of war. From The Hague to Geneva (1897–1919) this has been the social and political endeavour framing the great European wars. This positive solution allows the co-existence of the three theories as explanations but not as rules, and allows a margin for pacifist propaganda on the one hand and Imperialist propaganda on the other. The ethical terms of war are confused with war itself, and the ethical terms of peace with peace. Under these circumstances the various Churches confine themselves to preaching peace as a good, and are constrained by public opinion and the political organization of peoples to support every war *hinc et inde*. In the name of religious principles

the Churches thus sustain by faith, public worship, and the sometimes over-enthusiastic support of the various clergies, the fighters who on both sides declare that they fight for justice, for good, for civilization.

We must here recall as a title of honour the attitude of Benedict XV, who during the World War maintained his neutrality above the struggling peoples, and could thus work on the plane of moral assistance and give utterance to timely words of peace. But he was understood by neither rulers nor people, nor clergy. He remained as witness to the fundamental conscience of Christianity, which reprobates war and preaches peace. He was the symbol of the immense ethical conflict in the greatest war of the world.

Now, the legal and ethical terms are carried on to the plane of organization—that of the League of Nations and of the Kellogg Pact. We shall see in Part IV if and how it may be possible to make an historical beginning in the endeavour to narrow and finally close the immense gulf that war creates between the ethics of conscience and the historic reality.

CHAPTER XII

OUR OWN THEORY

§ 50. In this chapter we seek to formulate a fourth theory, taking into account both the intrinsic value of the three others and the deficiencies that aroused our criticism. This theory forms the gist of the whole of the present work, but here we propose to set forth its reasons and confute objections. Our theory is on the plane of historical relativity, but we do not call it either "relativist" or "historicist", for these terms recall philosophic theories which are not ours.

Our theory upon war may be formulated as follows: *War comes about inasmuch as it belongs to a determined social structure. And inasmuch as it belongs to a determined social structure war cannot but be deemed legitimate, provided that the formalities and conditions have been fulfilled that correspond to the prevalent general conscience of the time and place, to custom, and to previous agreements.*

The first assertion might seem in its formal terms to be common also to the three theories we have examined. All three admit that war, as the struggle between human nuclei, is a result of the concrete conditions of society. But there is a substantial difference which must be emphasized. In these three theories the social fact is identified with the fundamental needs of human nature, and hence war in general assumes an aspect of necessity, even if not every war is necessary. In our theory, on the contrary, the social fact is identified not with the fundamental needs of human nature, but with the historical process; thus war appears merely as the product of determined social structures. If these change and evolve, war may not only change and evolve, but disappear, with the disappearance of the factors creating a relation between the social structure and war. As a first step, we deny that the relation between human nature and war is substantial, necessary, or fatal. For us it is merely historical, contingent, and evolutionary. We

indeed look upon war as upon every other human institution, as materializing social relations in a determined historical environment and process, and from this point of view we consider not only war but every social form. It places us on an historical plane, upon which all social institutions materialize or disintegrate with the materialization or disintegration of the human relationships that form the living substance of society.

In the course of the present study we have several times referred to the disappearance of determined historic institutions such as slavery, polygamy, or the private vendetta. In the following chapter we shall see if and how we may conceive the abolition of war. This question will round off the formulation of the first part of our theory, emphasizing its substantial divergence from the three systematic theories, and should give a rational basis to the whole movement, seeking the elimination of war from the International Community.

§ 51. The second part of our theory elucidates the historical fact and makes it the basis of the legitimacy of war. For, as we have seen, the historical fact of war transcends or evades the ethical concepts of justice, the legal concept of Reason of State, and the bio-sociological concept of the social struggle. Indeed, it is impossible to contain war within any one of these theories. In the concrete, both sides presuppose a justice that cannot be proved, a utility that is unobtainable, and the necessity of a struggle that can only resolve itself into further struggles, or the destruction and elimination of the enemy people.

Our theory moulds itself on the historical fact, neither transcending nor evading it, and the historical fact in its turn brings no contradiction to our theory. The concept of the legitimacy of the use of force in disputes between human nuclei is not based on ideologies removed from time and space and considered as substantial realities—ideas of justice, Reason of State, or bio-sociological struggles. It is concerned merely with concrete and variable factors in the historical

process, viz. the fulfilment of "the formalities and conditions that correspond to the prevalent general conscience of the time and place, to custom, and to previous agreements". And since these factors change and evolve, so the general conscience, of which historical institutions and their particular forms are reflections, change and evolve likewise.

By the very fact that war is an historical institution, regulated by conventions and reputed as an extreme and conclusive means of settling disputes between people and people, its legitimacy must be conditioned primarily by outward and visible forms, by traditional and conventionary bonds, by a real form of publicity that for centuries has had its sanction as a public right. This is admitted by all theorists, even the exponents of the three preceding theories, but the difference between their theories and ours lies in our basic reference to the historical fact, indicated by the phrase "that correspond to the general conscience of the time and place". The idea of the general conscience, while it seems indefinable, serves to indicate the predominant motives in public opinion—psychological motives, incapable of resolution into anything else, and hence insurmountable. It is impossible in a war to arouse the solidarity of the people that fights and suffers without corresponding psychological motives, and these are not abstract or theoretical, but concrete and historic; not strictly ethical, juridical, or social, but psychological. The psychological factor resolves into itself the ethical, legal, and social values comprised in the fact of war, but only in so far as they have become concrete and are felt as such. Thus even when there are no true data of justice, utility, or strength as reasons why a war should be fought, such a war may be psychologically felt to be just, profitable, sure as to its issue, and rendered necessary by circumstances.

To avoid misunderstanding, it is necessary to understand exactly what we mean by the "general conscience". Even this cannot have the same quality and extension in all times and all places. In the time of mercenary armies and free companies,

when a considerable portion of the populations stood aloof from the local wars, dreading them only because of their lamentable consequences, the psychological motives of such war were limited to the princely houses with their followers and parasites, to the captains, adventurers, and soldiers, and to the regions directly concerned in the issue of the battles. The circle of solidarity was thus restricted, and the public conscience to approve or dissent was limited and weak. In the last World War, when millions and millions of men were called up, when the life of the whole world was arrested, and a vast number of States dragged into the struggle, the general conscience took part in the war with an extension and intensity such as to involve the maximum mass of the interests and values of the present civilization. To-day, dynastic or religious wars such as those of the XVIth and XVIIth centuries would be impossible, because they would meet with no adequate response in the general conscience. In the XIXth century, national wars, which were not possible in previous centuries, became possible with the formation of a new national consciousness and the birth of that new element, of the highest importance from the psychological point of view, known as the right of nationality. Napoleon, in order to carry the French with him in his wars, worked on the feeling of patriotism as against the foreign and anti-revolutionary coalition, appealing at the same time to the impulse of proselytism for the ideals of the Revolution. Later on he dragged them on to his battle-fields by the impetus of his genius and the dream of a French hegemony. And at the last he fell through the excess of his wars; victorious though they were, they had overreached their correspondence with the general conscience, which already was struggling free from the vortex of his policy.

These references serve to emphasize the diverse import of what we call "the general conscience of the time and place". Yet we must go still deeper into this idea, which must not be confused either with the war sentimentality that envelops men of valour and audacious and bellicose heads of States, or with

any particular and interested group. The general conscience expresses itself in the formation of currents of thought, in the way in which relations are created between politics and economics, in the historical tradition of a country and State, in demographic needs, in racial formations, in religious conceptions, in literature and art, in public and legal institutions—in short, in the historical process itself, taken as a whole and in its interior evolution.

This process identifies itself with what we called (Chapter VI) the "remote war-causes", to which we denied any true causality. Indeed, they are not in themselves causes of war, but may prepare the formation of a general conscience that will hold them as such, and hence consider them as demanding war. The relation between such "causes" and the war is then expressed in terms of justice if a breach of law is concomitant and predominant; in terms of Reason of State if the aim is profit or advantage, which is translated into political necessity; or else in the exaltation of the right of might and conquest, which becomes the right of empire, of nationality, of race. We hold, therefore, that the three theories express various grades of the general conscience in a given historical moment, but that the foundation of these is only a psychology created by the relation between a critical moment in the historical process and war, considered as a resolvent. The first is not a crisis in itself, for all moments are historically critical, nor is the second a resolvent, for war resolves nothing substantial that cannot be resolved by the timely use of other human means. But this psychology is formed and develops. The resulting general conscience allows the moralists to resolve their quest for justice in an affirmative by taking refuge in criteria of presumption or probability; it allows the leaders of the various religions to assist all the combatants and to spur them on to the struggle in the name of religious ideals and beliefs; it allows the statesmen to uphold *hinc et inde* the various theses of advantage, utility, and the duty of the State to fight on till its end is achieved.

Under such circumstances a war that has the general consent of the populations concerned would appear legitimate, subject to the fulfilment of the formal and substantial rules in force at the time, and of any previous agreements. This limitation is not external or formal, but intrinsic in the whole course of the historical process. Every concrete institution as such creates these limitations, which are typical of its nature and develop as their environment develops. War also, inasmuch as it is an institution, has its limitations, which materialize variously in various times and places into customs, pacts, conventions, and these are not empty forms but pregnant with a complex of human ideals and values. Doubtless the formalities remain the same, whereas with time their significance and values change, but their observance is the sign of the legitimacy of a war, inasmuch as for the public conscience this observance is not a formality but a substantial reality. And such rules and conventions are substantial, for they tend to the rationalization or pseudo-rationalization required by man when he strives to justify his acts and to make them conform to his ideals, theories, and beliefs. Of this we have spoken in dealing with war itself (*see especially* §§ 22, 23). Indeed, traditional customs and rules have great importance, inasmuch as their formalism enshrines constant factors of natural reason, and their observance corresponds to the conscience of humanity. Therefore there is nothing so repugnant to a man or a people as a breach of faith, the violation of a pact or common custom, or an abuse of trust—all basic elements in the relations between the States.

A contradiction between the first two terms of our theory, between, on the one hand, the "formal and substantial rules in force—custom, and previous agreements", and, on the other, the "general conscience" produces the substantial illegitimacy of war. The circle of relations is broken; the act of war loses the character of a legitimate institution and becomes an arbitrary, illegitimate, and hence a criminal act. This may happen in the case of a particular war, when war is recognized

as an institution, under certain conditions, or in all wars, when no case of war is admitted. This is what is meant by "the general conscience of the time and place". The problem is whether there may come to be a general conscience that will agree or maintain that all war should be proscribed as a crime, or only war of aggression, and whether such a conscience could assume concrete form as an international organization ruling out war from the number of recognized juridical institutions, and able to defend itself against the criminal cases that might arise. This we shall see in Part IV. Under the present regime, when war is still an institution, we can only speak of legitimacy and illegitimacy. Such an estimation may or may not be made by the populations concerned and their leaders before and during the war, or it may be a practical or historical judgment passed when the war is over. But its moral and legal effects will make themselves felt at a given moment and on given elements in the historical process, and will always influence the formation of the general conscience.

§ 52. It will be well to anticipate the objections and criticisms this theory may arouse.

(*a*) The first objection: That this theory justifies all wars, since wars may be legitimate for both sides; since every war is accompanied by a favourable psychological state creating a corresponding general conscience; and finally, since the formalities, conventions, and pacts between the various peoples are nearly always observed, and any eventual breach of such observance may be justified by the plea of necessity. Our theory might thus seem to reduce itself to the historical justification of all wars.

At bottom there is some reality in this objection, for, indeed, when a State or people decides on the extreme step of promoting or accepting a war, it believes that it is acting legitimately. Hence from the subjective point of view, all wars might be justified. But this is not our theory, which has no such bearings. In dealing with war we seek to individuate the historical

factors, which, so to speak, carry the feelings of the operating subject on to an objective screen, and hence acquire an efficacy of their own so that they may be appreciated in themselves, though not entirely apart from their subjective origin. For example—the struggle of Europe against the peoples of Islam was a century-long struggle between two civilizations for long irreducible to any kind of elementary contact of homogeneity and co-existence in the international field. The general conscience of either people developed in the direction of a struggle, till war appeared a right and a necessity. It was therefore impossible to draw a distinction between offensive and defensive war, between wars based on sufficient or insufficient motives, between the possibility or impossibility of the settlement of particular disputes. All these were extrinsic phases of a fundamental struggle centring round the Mediterranean basin, between a people urged by demographic and economic needs and by political and religious fanaticism to oppress other peoples, whose existence, liberty, and faith were strongly threatened. Thus two consciences, each acting legitimately from its own standpoint, faced each other, and the struggle could only be resolved by force. Here is the explanation of the efforts of the mediaeval legists to justify, in accordance with their mentality, all wars against the infidel, who was declared subject to Pope and Emperor, denied even the right of possession and against whom was admitted the right of reprisals, slavery, and *debellatio*. And, on the other hand, when the period of co-existence, peace treaties, and economic and moral relations between Christians and infidels had opened, currents of ideas in favour of the recognition and respect of the rights of infidels grew up and became predominant, even though the possibility of still fiercer and more decisive conflicts continued to exist.

As regards the Mussulmans' standpoint, we certainly cannot admit that they had the right to invade Europe, but we must recognize that for them the right to make war corresponded to the spirit of their religion, their needs, and their mentality; it was in accordance with their civilization, which was at once

barbaric and cultured, primitive and refined. When the peoples of Islam, established on the shores of the Mediterranean, were able to make treaties and accept the conventions and norms of the European peoples, they began to become Europeanized, and the terms of dispute were then displaced, for they had begun to form part of a wider society and to feel its influence.

A second example—the War of American Independence. England, deeming North America her colony, in putting down the rebellion, brought forward a legal argument of legitimacy. The Americans in their turn, conscious of their political maturity, fought legitimately for independence. The conflict was irreducible. The mistake lay with the English, who failed to perceive how this American consciousness had come to constitute a right, and yet this mistake could hardly be considered as such, for it was the result of historic traditions and juridical principles believed inviolable. The rebellion set the problem. War was not necessary, but for the conscience of the time it was legitimate. In the same way in 1919–20 war between England and Ireland was not inevitable, and in this case war was avoided because to the English conscience an armed conflict resolved itself into substantial illegitimacy, even though formally it might have been held legitimate.

The Great War is an interesting case in point. No one can deny the illegitimacy of the Austro-Hungarian war on Serbia, at any rate from the moment that the latter had shown herself prepared to admit arbitration in questions diminishing her sovereignty. No one can deny the untimeliness of the Russian mobilization. No one can deny the flagrant illegality of the violation of Belgian neutrality by the very State that was one of its guarantors. No one, finally, can assert that the general conscience of Europe was in favour of war. The war was thus illegitimate for various reasons, and the war-psychology grew up after the peoples were already engaged to their uttermost in the struggle, and after the growth of the conviction that the war was a struggle to the death.

These and many other historical facts all tend to show that

our way of considering war in its historic factors and their inter-relations is right and reasonable. But another question arises:

(*b*) Whether it is possible to judge of the legitimacy of a war, and if so, who can do so save those opening the war—that is, the political authorities? And if the political authority judges of the legitimacy it may also judge of the justice and utility of a war. Thus from this standpoint our theory might seem to substitute the legal term of legitimacy for the moral term, justice, or the political term, utility.

This second objection could be raised only by those who have not fully understood the spirit of our theory. The historic legitimacy of which we speak may be estimated, or may be estimated up to a certain point, or may not be estimated at all, according to the case. But it is not necessary for there to be a preliminary estimation of the legitimacy of a war, for the concept of legitimacy itself coincides with the historico-social datum. Indeed, in a society organized like that of the Middle Ages, such a judgment, translated into legal and religious terms, used to be made by a hierarchy of authorities leading up to Pope and Emperor, and at the same time by the free corporations and autonomous bodies which expressed the opinion of the people. To-day there is a League of Nations, a Permanent Court of International Justice, various interstatal unions such as the Pan-American Union and the British Commonwealth, together with various forms for the free expression of public opinion, which can pronounce on the legitimacy of a war. In an absolute regime, it is true, many channels for such expression were wanting, but not to such an extent as to prevent the formation of any public consciousness as to the legitimacy or illegitimacy of a war. This consciousness could be expressed by the Churches, by various classes, by the Universities, and by writers. Public opinion might remain ineffectual, but it surely helped to change the general orientation and to modify the public regime.

The legitimacy of a war is, therefore, inherent in the war

itself, and we do not consider it as a motive why war should be made or not made. It is possible that the motives of legitimacy or illegitimacy may be felt and revealed before the declaration of war, and so influence those on whom the decision as to war rests and who are directly responsible for it. But such cases can only be very rare and apart from the will to war. Nevertheless, illegitimate wars bear in themselves a moral stigma that the conscience of the peoples concerned, and that of other peoples, cannot fail to remark, and which remains for long after, even in case of victory, as a veritable social nemesis. In the same way a crime brands its author with a moral stigma, so that even if he remains unpunished, he bears for himself and those who know an insuperable moral sanction. In the life of peoples, this is not a moralist's supposition, but a reality; the more so the more the development of the ethical concept of human relations and the deeper and more interior the stage of international life.

(*c*) A graver objection may be deduced from this mode of estimating the legitimacy of war, inasmuch as it is independent of war-motives. Do we, then, absolve the promoters of war of all moral responsibility? This consequence we can only deny, for whether a war be legitimate or illegitimate, the responsibility of its promoters always remains. The moral problem of such responsibility lies outside the scope of any theory of war, for it resolves itself, on the one hand, into the responsibility for evil actions in general, whether directed to promote war or not, and, on the other, into the simple will to war as apart from any necessity, presumed, feared, or reputed. We exclude, as we have said elsewhere, any necessary connection between the so-called war-causes and war and between war-causes and responsibility for war, but we do not deny the existence of responsibility if and in so far as it can be individuated. We recognize the difficulty of individualizing responsibilities in a great many cases, but in certain others we regard such responsibilities as self-evident. For us, all responsibilities are subjective and not objective. We cannot seriously estimate war responsi-

bilities by objective criteria of justice, but only by criteria of wilfulness, inasmuch as the more war is wilful, the more it is anti-ethical and immoral. This judgment which concerns only the individual conscience belongs to the relations between a man and his Maker, and cannot assume a legal aspect in the sphere of society till war is condemned by law as a crime. Unfortunately up to the present war has not been proclaimed a crime, and only to-day is the outlawry of some wars and the permission of others by an interstatal authority established by covenant beginning to be a legal fact.

(*d*) A final objection: That the theory here set forth is not practical, and provides no norm for human actions, so that, like the bio-sociological theory, it could only be an explanation. It would thus seem to come outside the scope of ethics and politics, and remain, to be accepted or rejected, as merely an historical interpretation of war.

The answer is that it is a mistake that is often made to confuse theory with precept, and to deny to theories in themselves their connection with practice. We have seen that even the theories of the Just War, or of War for Reason of State, do not hold water as objective norms when carried on to the practical field. They have a merely historical value as the interpretations of particular attitudes of the general conscience. The value of our theory lies in utilizing all the various moral, political, economic, and social currents, in so far as at a given moment in the historical process they become psychologically effective and form an historic synthesis. As we have already said, this does not affect the moral responsibilities of human actions in their spiritual inwardness, but such responsibility neither adds to nor detracts from the historic synthesis. The ethical responsibility deriving from the state of mind and will of the man that acts is totally distinct from the order of historic values created by human actions. If this twofold plane of man's activities is not taken into account it is impossible to understand the import of the two different standpoints. A bad action, or a good action performed with evil intent, is always an evil

for the person that performs it, but its historical development falls outside subjective good and evil, and by becoming an historic fact it produces its own good and ill independently of the will and intention of its author. It might be supposed that all the rulers and leaders in 1914 acted justly and even sought to avoid war, and hence that their intentions and actions were good, but the series of acts performed by the Governments in that difficult period, from Austria's measures against Serbia up to the outbreak of the European War, resulted in the creation of an environment apt for the war that ensued, and that we objectively judge as illegitimate.

These considerations give us the practical lines for proceeding to consider whether war can be eliminated—the subject of Part IV. Estimating the phenomenon of war in its historical position and relativity, and seeking in war a legitimacy based on international relations, completed and given value by the general conscience, we have found the theoretical stepping-stone from an historical period in which war might appear legitimate in various cases to a period when all war will be held illegitimate. And while war, inasmuch as legitimate, may be reputed either just, or useful, or necessary, illegitimate war can never be so reputed. If the International Community can be so organized that all war be deemed illegitimate, war as a legal institution will cease to exist.

PART IV

THE POSSIBILITY OF THE ELIMINATION OF WAR

CHAPTER XIII

THE TERMS OF THE PROBLEM

§ 53. The eliminability of war is a consequence of our theory, inasmuch as the hypothesis of a society so organized as not to require the use of force for the settlement of international disputes contains no intrinsic contradiction and entails no theoretical objection. But in considering the eliminability of war as a separate thesis, apart from any strict connection with a determined theory, we must define the terms of the problem so as to avoid falling into easy equivocations, and so as to be able to study it objectively and from all sides.

We have considered war as an internationally admitted legal institution, and hence from the beginning we have defined it (§ 20) as "the right to settle a dispute between State and State by armed force". We have seen that the juridical premise of war is the alleged impossibility of finding another suitable means of settlement—than that of the use of armed force—an impossibility expressed by the condition that there must be a state of necessity. Yet in various parts of this book an accurate analysis has shown us that this pretended state of necessity has no real connection, but only an historical and psychological connection, with the ensuing war, and that a true state of necessity never arises in the relations between civilized States. Yet war subsists between modern civilized States, and even in the setting of the League of Nations and the Kellogg Pact. Hence our problem may be expressed as follows: *whether and how war can be eliminated from the international organization.* We do not refer to the elimination of arbitrary and culpable recourse to arms, but to the elimination of the right of war, so that war would no longer be the exercise of a right, but an abuse—always illegitimate, never legitimate.

Can such elimination be proved possible? We must be clear as to the sense of the word "proof" when applied to social and historical problems. No one can ask us for a mathematical or

empirical proof. We can, first of all, give negative proof that there is no contradiction in terms and no theoretical absurdity in our proposition. We can also analyse the correspondence and conformity of its terms from the ethical, psychological, and social points of view. Finally, we can correlate our opinions to determined economic, legal, and political developments in the international field. We shall thus be able to project the elements of the present into the future. Our plane, therefore, remains that of sociology and history, and we continue faithful to our method.

In order to find a comparison to the present problem we may take slavery. For thousands of years slavery was an admitted legal, economic, and political institution. When it was in force and general it was commonly held to be a necessity of nature. Philosophers, jurists, and economists justified it. The abolitionists, as we may call them, while they might procure a mitigation of the state of servitude, or, like the early Christians, promote a tendency to individual liberation, or else, in view of the social and economic difficulties in the way of collective liberation, the humane treatment of slaves in the name of religious principles, they could not make slavery cease to be a recognized legal institution. This came about among civilized peoples at the end of a slow process of evolution, which was first moral and psychological, then economic and legal, ending in total abolition. We must remember that the American Civil War over the slave problem was hardly more than half a century ago, that at the end of the XVIIIth century Venice, Genoa, Naples, and Palermo were slave-markets, and that only a few years back the ships of civilized countries served for the transport of slaves. The arguments of the philosophers, jurists, and economists in support of slavery and against the possibility of abolition show us two things: first, that their reasoning was bound up with a determined historical situation; and secondly, that it does not hold good for another historical situation. They projected on to a static plane what, on the contrary, is evolving on a dynamic plane; they took what

was relative and mutable for conclusive and immutable. Unfortunately it is a very common optical illusion, especially in the field of abstract culture, to see the relative world *sub specie aeternitatis*.

If anyone in the Middle Ages had said that the feudal structure would fall and give place to another political and economic structure, perhaps some far-seeing mind might have grasped the possibility but not the manner of such a change. But the majority would have believed it impossible; in the same way as if anyone in a polygamic society had asserted that the polygamic family, as a legitimate institution and the basis of the society of the time, would come to an end and be replaced by the monogamic family. Examples might be multiplied. Many social institutions of the past were transient and are to-day regarded as crimes, such as the family vendetta and private justice.

These examples make it plain that from the social and historical standpoint no legal institution can be other than mutable and transient when it no longer corresponds to the concrete of social life. Of this we have spoken more than once. We find, therefore, no difficulty in admitting that war also as a legal institution may disappear if the other conditions rendering it still effectual and actual can be changed—that is, if the social environment, by its development in accordance with the historical process, deprives war of its *raison d'être* as a legal institution.

§ 54. The arguments against this hypothesis may be reduced to three: historical, psychologico-social, and political. Let us consider them in turn.

(*a*) It is said: In every stage of humanity and everywhere war has existed. History gives us no arguments in favour of its eliminability, but against it. Everything leads us to believe that war will continue in the future; for however the political, religious, economic, and legal factors among the various peoples may have changed, the factors of war have remained unchanged.

To assume such a change is to take an excursion into the realms of fantasy.

This argument is couched in purely historical terms. It cannot cross the threshold of to-morrow, and must stop short at the past and present. To deduce the future from it is a logical error, for the consequence would be greater than the premises. The value of this argument we defined in the first part of our theory (§ 50), when we asserted that "war comes about inasmuch as it forms part of a determined social structure". To go beyond these terms is a mistake, and the instances we have given of the transience even of legal institutions that have lasted thousands of years—like slavery—are signs of an ever-active, if not always equally perceptible historical, evolution.

(*b*) If this historical argument is taken as evidence that human nature is such as to render war insuperable, it reduces itself to the psychologico-social objection, the second, which may be formulated as follows: Man cannot be restrained by social discipline, save through the joint action of reason and force. What the penal codes, law-courts, police, and prisons are for political society, the right of war and armies are for international society. The first is doubtless a more reasonable system than the second, but what other system would possess the necessary force?

Here the mistake lies not in the premise but in the consequence. We, too, admit that in all organized society there must be coercion and punishment as well as reason and education—that is, a rational use of force, and this both in the State and in International Community. But we do not admit that armies and wars are the only system of organized coercion and punishment for any type of international society, but merely that up till to-day armies and war have been the extreme means of States for the settlement of their disputes. On this point we refer the reader to Parts I and II of the present work, and especially to where we have spoken of the rationalization or humanization of the struggle.

(*c*) The third objection is political. In order to reach an

international system in which war would no longer be a right, there would have to be an international authority possessing a power superior to that of the single States—that is, a veritable super-State. Now, if such a super-State had not a strong internal organization, not only possessing power, but able to exercise dominion, it would not attain its end—just as the Papacy and the Empire failed in the Middle Ages, and just as the League of Nations in its present form must fail. If, on the other hand, such a super-State were truly strong, it would constitute an intolerable hegemonic domination, and in the long run would fall to pieces through the reaction it had aroused. The play of social forces in the political field cannot be eliminated.

The difficulty thus expressed may have two aspects: one, social and theoretical—the impossibility of suppressing the play of forces in the International Community; and the other, political and practical—that is, the political necessity for the various peoples to possess means of defence such as armed force and the right of war. Of this second aspect we shall speak later. The first aspect does not entail the assertion that war cannot be eliminated, but only that the play of social forces in the international field cannot be eliminated—that is, the persistence of the social struggle. Now, we admit that political life contains intrinsic elements of social struggle, for in human society struggle is perennial. Politically, therefore, both in the interior of each State and in the relations between State and State, this struggle can never be suppressed. But this does not lead logically to an admission of the necessity of war and of armaments for war. In the interior of the single States we no longer find petty feudal lords with their castles, soldiers, bravoes, incursions, and battles; the struggle instead expresses itself both electorally, through political and municipal voting, and juridically, before the judges and law-courts, according to the case in point. In order to remain within logical and historical terms, we admit that up to the present the institution of war has been a corrective, though of the lowest order, in

the play of interstatal forces between hegemony and anarchy, inasmuch as there was no other external means to take the place of the right of victory.

This is a sad consequence, legitimizing war in a still barbaric and uncivilized phase of humanity, when the antagonism between reason and force has not been wholly swallowed up in a synthesis of rationalized force. This synthesis cannot develop save in a social form seeking to suppress the antagonism between the single nations and States, and to give the irrepressible political struggle a more rational and more human value and expression—that is, to replace the right of victory, which is a right of pure force, by a judicial and social right, the right of reason.

§ 55. Let us consider an international organization of civilized peoples in which the right of war is no longer recognized. We start from the elements already attained by political life and international law. We have thus the two great federo-State organisms within which war as a legal institution may be said to have been eliminated, viz. the United States and the British Commonwealth. We have an inter-State union, Pan-American, under which wars of aggression are outlawed, and compulsory arbitration is to be organized. We have the Covenant of the League of Nations which, while it does not eliminate the right of war, limits it both substantially and formally and denies it in spirit, so that the Permanent Court of International Justice arose as a natural consequence, and the system of arbitration clauses is spreading. The function of these groups and organisms is to form what may be known as the zones of war immunity. Finally, we have a collective declaration renouncing war as an instrument of national policy, and an engagement not to have recourse to war for the settlement of international disputes, as in the Kellogg Pact.

The effort, therefore, of the civilized States has been, and is, that of bringing about the establishment of pacts in which war is proscribed always, and in every case, as illegitimate—not

that a pact can determine illegitimacy, but because it may give such illegitimacy legal significance.

Apart from these and eventual practical experiments, the general idea that the States bind themselves to have recourse no more to war has not only a legal bearing, but a political bearing worthy of consideration. The first question that arises is the following: Can the League of Nations or any other league, such as Pan-America, achieve sufficient moral, legal, and political authority to prevent any war between Member States? The second question is this: Were the League of Nations or any other league to achieve such power over Member States, would it not easily come to form a hegemony of certain States which would dominate the others? Let us confine ourselves for the moment to these first questions.

(*a*) Moral authority is achieved by exercise and by equanimity, courage, and prudence in decisions and tendencies. It is consolidated by the forming of tradition and the organization of powers; it expands with public confidence. A tyrannical Government may have great material force but little moral authority, and, on the contrary, a power buttressed by little force may achieve a vast moral authority.

We can conceive of either a League of Nations with much moral authority, or a League of Nations with little moral authority. And this means nothing more than that the present international organization may become strong and lasting or may crumble to pieces. It remains for reasonable, prudent, wise, and courageous men to see that so profitable an experiment, with which so many hopes are bound up, does not fail. One must recognize its defects without magnifying or concealing them. The wise thing will be to correct and overcome them. Moral authority, then, must form the basis of legal and political authority—that is, of social authority, for no social authority can endure without a moral basis. Powerful monarchies, stable oligarchies, and well-organized democracies have fallen through lack of moral authority. Moral authority must, therefore, be presumed a *sine qua non* of the League of Nations. Here we

are studying its social authority, or authority *tout court*. Now, if the League has not sufficient authority it cannot achieve its purpose of eliminating war, and it will continue to flounder in a series of hesitations, procrastinations, and compromising acts which will accumulate rather than eliminate war-motives. The crucial point is the boundary between the independence of the single State and the authority of the League. We have already examined this important problem (Chapters III and IV), and we have seen the organic defects of the League in this respect. Notwithstanding this, the League by its very nature implies a moral and rather political than legal limitation of the independence and powers of the different States, and there are various signs that it is beginning to constitute an autonomous and responsible authority. The step we call for, the settlement of all disputes between Member States by moral, legal, or political means, so as to exclude war, lies in germ in the very Covenant. It goes without saying that the procedure and judicial proceedings of the League and its organs, such as the Permanent Court of International Justice, must be able to give the maximum guarantees that as far as possible errors and faults will be avoided, and even in exceptional cases there should be possibilities of revision. All this implies the development and evolution of the League and its organization. Will this be on a continental basis? Will it be single or multiple and federated? Will it have relations and links with Pan-America? Will it represent Governments or legislative assemblies? These are problems for the future. It is certain that the present compromise between State independence and League authority will have to be resolved, so that the authority of the League may develop on the margins that public opinion will consent to withdraw from State independence. The steps will be slow and almost imperceptible, and the difficulties many. A convergence of interests will have to determine itself between the various States and the League, with a stability of organization, and this can only ripen with time and tests brilliantly passed.

This manner of understanding the League is met by a

strong opposition from those who believe that there can be no social authority without coercive power, denying that the League has any true coercive power suited to its purpose. For the decisions of the League to bear fruit they must be ratified by the Member States and become incorporated in their domestic legislation. Were the League to have military coercive power it would need to possess and dispose of armies and fleets superior to those of the strongest State, and this would be impossible without a true and proper political unification, which is out of the question. In substance, the League of Nations has less authority than the mediaeval Emperors, who at least had the strength derived from their own kingdoms and their hired armies—less than the mediaeval Popes, whose political decisions were buttressed by their religious authority, and who could depose Kings and absolve their subjects from their oaths. In the State all citizens are without arms, and the public power alone is armed. In the International Community all the States are armed and the international authority alone is unarmed. In this situation there can be no exercise of coercive power.

The difficulty rests, above all, on the present conditions of the League and of the various States, and therefore we base our answer on present facts. As we have already seen (Chapter VII), the Covenant of the League contemplates the case of a State's resorting to arms and promoting a war in defiance of the obligations it has assumed. The principle of a solidarity of Member States against the covenant-breaking State is already admitted, and specific sanctions are provided, running from the breaking off of diplomatic and trade relations to an economic blockade. The fundamental idea of this article (Art. 16) is the moral, economic, and political boycott of a State—a real boycott, to be executed by the single States bound by the Covenant, and which even other States would certainly have to reckon with in view of its moral significance and the reasons giving rise to it. In the greater number of cases the threat of enforcement of this sanction would have the effect of averting or per-

ceptibly limiting provocative wars. But supposing that, nevertheless, the covenant-breaking State were to feel itself able to defy such moral obloquy and material losses and to prosecute a war, such a war would no longer be able to claim legitimacy. The act of war of the covenant-breaking State would be an act of violence, brigandage, piracy, which, though cloaked by national requirements, would receive the condemnation not only of public opinion, but of a moral and legal organization such as the League—that is, a collective and authoritative condemnation. For this reason the condemnation of such an act can also be made in the name of the Kellogg Pact.

Some do not believe that such a change of name has any significance, but this is a mistake. In a civilized society the moral and legal significance of an action is of supreme importance. For the degenerate and criminal class murder and theft are not disgraceful acts, but for the normal civilized man they are. Thus till now war has not been a disgraceful act, but, all the same, civilized countries seek to exonerate themselves from the charge of having provoked a war, or cloak the fact with idealistic pleas, maybe national pleas. We know what a source of weakness to Germany was her violation of Belgian neutrality, and we see her efforts to exonerate herself from any responsibility for the war. Well, this belongs to the past, but certainly henceforward, over and above the practical effects of the application of the sanctions of Article 16 of the Covenant, a collective verdict on the part of the League will have greater moral value—a verdict which will brand a State, or rather the rulers of a State, as responsible for a war and all its injurious and hideous consequences.

The same may be said, though in a lesser degree with regard to a non-Member State subject to the procedure of Article 17 of the Covenant, were it to promote a war.

The words of Article 16 of the Covenant, where it is said that "the Member States agree . . . that they will mutually support one another in resisting any special measures aimed at one of their number by the Covenant-breaking State" (or by

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the non-Member State mentioned in Article 17), indicate the possibility of a war on the part of Member States under the ægis and responsibility of the League. This is an extreme case, which maybe will never be put to the test, and which, on the other hand, may lead to a crisis in the League itself, but which is contemplated in convention and law, and indicates the attribution to the League itself of a certain coercive power in virtue of the international solidarity on which it is founded. The ensuing war would not be legitimate for both sides, but only for the League. It would be a judicial and punitive war, declared by authority and waged within the margins of necessity and equity. It would thus be not a true war, but merely the extreme exercise of a power, in the name not of any presumed right of victory but of the right of the sanctions of the Pact Law.

Thus even to-day, as indeed we have already seen (§ 27), the League of Nations possesses coercive power. Doubtless present currents of opinion are rather inclined to restrict this power, as was seen in the interpretation given to Article 16. We hold, however, that it will be possible to attribute still wider and more effectual power to the League if the Kellogg Pact is applied as one of its statutes.

§ 56. (*b*) The second objection derives from the first, inasmuch as if the League is allowed coercive power and powers of sanction this may give rise to the danger of a hegemony of certain States that will dominate the rest. This peril is present both from a general standpoint and as regards the League, which may become a field of rivalry in which the more powerful and astute States will achieve a supremacy at the expense of the others, as might be the case with the United States within the Pan-American Union.

First of all, a question: Is there any system in social life that can do away with individual differences? Assuredly not, for these depend on a complex of qualities, forces, and activities in each individual both as taken in himself and as taken in relation to his kind. The same may be said of human nuclei—

families, classes, castes, tribes, cities, provinces, and States Economic forces, geographic position, race, education, political structure, historical events, culture—all contribute to differentiate, specify, individualize, and potentialize every human nucleus. This fact creates the need for organization and harmony among the single forces, hence movements of association and dissociation are continual and synchronous, unity tends to multiplicity and multiplicity to unity. We analysed this phenomenon when we studied the International Community. The problem, therefore, is not how to level all the social and political units, the States of to-day, but how to co-ordinate them in a higher international unity, which will not be a true and homogeneous unity, but an organization of heterogeneous elements each with its own life and its own individual development.

The position, therefore, may be defined as follows: *Neither war nor the League of Nations, the Pan-American Union nor any similar organization eliminating the right of war, can ever do away with the differences between great States and small, between powerful States and weak; these organizations can only eliminate many motives of oppression and hegemony which are the natural consequences of war.*

A comparison will illustrate our thesis. When the structure of the States was weak and law did not rest on a well-organized central power, princes and barons, communes and factions, executed their own justice by acts of violence and vendettas, carrying whole populations into slavery, dethroning Kings and Popes, devastating cities and regions. When these forces could be gathered up in a single and authoritative regime, the disputes between families, classes, or populations were not abolished, but the methods of dispute were changed, transported from the plane of force and armed vendettas to that of civil competition and law-suits. This progress in civilized method is not ended and is always in process, in the simplest forms of society as in the most complex, in family and class relations as in international relations.

This is happening to-day with the League and with the other forms of international organization and pacts. The States have carried their disputes on to a social plane. If the right of war is abolished, all insoluble and troublous questions liable to rouse the peoples and set them at variance will be projected on to this social plane. The States will no longer use methods of violence, but the arts of persuasion and moral constraint. They will no longer injure innocent populations with artillery, aeroplanes, and chemical warfare, but they will strive to obtain a majority in the Council or Assembly, and a favourable award from the arbitration courts. They will take advantage of the weakness and mistakes of others, and they will succeed in laying hold of new sources of wealth and dominion. All this may happen, and it is in the nature of all human society for it to happen. But unlike a struggle by war methods, a struggle between States in the social field means that the methods used are rational methods. The social and public form of the proceedings, the method of liberty, the principle of equality of rights, provides the Member States with the possibility and means of forecast and counteraction, and in the normal course of events will prevent the strong States from abusing their power, or violating either the fundamental rights of the Covenant or the procedure intended to ensure that these shall be respected and enforced.

Social life is made up of trust. If this fails, disaggregation is at the doors, and the strong oppress the weak. Nevertheless, armed oppression which destroys goods and lives is one thing, and legal or political oppression, which little by little and with time may create a remedy by its very excesses, is another. What would be Utopian to expect from any social formation is the abolition of all differences of values and powers among its members, or the abolition of all disputes and struggles, and hence of all attempts to procure the hegemony and predominance of one or more States over others. This was well recognized in the formation of the present League of Nations by the distinction between permanent and non-permanent seats

on the Council. Indeed, a great part of world politics revolves round the triangle London, Paris, Berlin; while Tokio has especial significance in the Pacific, Rome in the Mediterranean, Moscow and Constantinople for the Asiatic world, and Washington tends towards a position of world-hegemony. But these great magnates of politics could not exert any useful action, even to their own advantage, if they did not find support and scope for development among other States, and if, even in the midst of the conflict of interests and policies that is often caused by their desire for supremacy and dominance, they could not count on a solidarity built up of trust.

The problem, therefore, of the development of hegemonies in any sphere of international organization remains at bottom unsolved and insoluble. The mistake lies in setting the problem in these terms. Instead, it should be presented and resolved in the terms in which we envisage it—that is, that an international organization to eliminate war is the least costly means, both morally and materially, of settling disputes, and the most profitable means of reducing and confining tendencies to hegemony and dominance to a rational plane.

History will tell us if this assertion corresponds wholly or partially to reality, but no man can fail to see its reasonableness. The danger that in a league regime the autonomies of small States and the rights of minorities will not be sufficiently well protected, and that the economic resources of the poorer countries will fail to receive sufficient consideration in a regime bringing a certain limitation of independence and national initiative is certainly not as great as the danger of similar happenings in a war regime. And a war regime may even reach the pitch of dismembering a great people and reducing it to a state of economic subjection and servitude, as happened with Poland, and as the French Nationalists sought to do with vanquished Germany.

There is an enormous difference between the psychological state of war, which may reach the justification of every excess in the name of the right of victory—although paid for dearly

when the time comes—and that of an assembly or conference of States, or of international jurists and experts, even though these may make mistakes or even commit injustices. Morally and materially the consequences are very different. One might as well compare the psychology of two enemy families engaged in periodical armed feuds, each slaying the best of the sons of the other, and that of two families, however inimical, engaged in law-suits one against the other. One means barbarism; the other, civilization.

§ 57. The other two difficulties that present themselves when we come to set the terms of the problem are: (*c*) the practical impossibility of a universal pact really obliging all States to abolish the right of war; and (*d*) the conviction that certain rights and guarantees for the vitality and development of civilized States demand a permanent military organization and the right to use it when the moment comes.

Let us, first, examine these two difficulties from a general point of view, reserving reference to the disarmament problem for the next chapter.

(*c*) The third difficulty is not imaginary; the Kellogg Pact serves to show how impossible it is, in the present state of historical evolution, to induce the States of the world to a complete renunciation of the right of war. Nearly every one of the signatories of the Pact had its own *arrière pensée*; and the reservations made weakened it exceedingly. In truth, the state of post-War Europe, the internal situation of certain countries, colonial conditions, lack of economic stability, and so on, render international life so variable and uncertain that it is not easy to create a rigid system of pacts for the elimination of war without the bringing forward of contrary hypotheses, and without the making of reservations and exceptions, by which each State seeks to foresee and provide for its own especial conditions, requirements, and fears.

To arrive at the complete elimination of war another and more audacious step is necessary—that is, that a group of the

most courageous and highly civilized States should renounce all wars, without exceptions or reservations, and at the same time declare their willingness to be recognized as disarmed and neutralized States, no matter what the international situation might be. This would mean at first the co-existence of other States accepting instead the present regime, the League of Nations and the Kellogg Pact. Such co-existence would imply what we may call a "mixed system". This, or some similar way, must be followed before we can reach complete elimination of war. The free and simultaneous renunciation of all war by all States is practically impossible; no authority in the world can oblige such a renunciation unless a favourable public opinion has been formed able to impose it on the authorities of every State. But the way to form such a public opinion lies in the actual realization of disarmament and the renunciation of all war on the part of such a group of bold and courageous States.

Such a "mixed system" does not appear impossible in the present stage of international organization, precisely because, as moral and juridical guarantees of international life, we have the League of Nations and the Pan-American Union, both of them strengthened by the Kellogg Pact. It is true that the rights of neutrals would have to be better defined and guaranteed, and this would imply a real and secure guarantee of the freedom of the seas. In this "mixed system", in regard to war and its preventive organization, there would be two contemporaneous stages of civilization, developing and exercising a mutual influence in the theoretic and practical sphere. But the ideal values of the more progressive civilization must prevail. It has ever been so. Ideas make their way slowly in the world, but their manifestation and progress is unceasing. In every century there have been ideal conquests, starting from a centre of civilization and spreading till they extended to all peoples vivified by that civilization or feeling its influence from afar. Since the end of the XVIIIth century State regimes have tended towards the representative system and the method of liberty,

which have spread from the more evolved centres to the less evolved. Only Russia remained an absolute State, but now Russia has accomplished her catastrophic evolution towards Bolshevism, and even Turkey has had to begin a religious revolution in Islam tending towards a Western secularism, which will not be without fruit in the closed field of Mohammedanism. Remembering the history of the abolition of slavery, one notes the same radiation from more evolved to less evolved centres. To-day slavery is still combated and pursued in its last strongholds—among the primitive people of Africa.

The abolition of war will come about in the same way. During a long and laborious period a pact for the outlawry of war will have to spread gradually from a group of States to all States. In this period war might come about either as a particular, easily localized, and hence eliminable event, or as the clash between civilizations or between races. To-day the first type of war is hypothetically possible—for instance, a war between Russia and Poland, in which Poland might be backed by the States of the League, and Russia blockaded in accordance with Articles 16 and 17 of the Covenant. The second type for the present cannot be foreseen. If the Asiatic peoples—no others—come to a strength and consciousness such as to enable them to achieve their autonomy and dominate the white race, by that time they will have been permeated by the influence of international life, for a century or more would have to pass before such hypothetical conflicts became possible. In any case men, while they cannot see into the future, bring their conquests into being in the present, and little by little evolve their consequences. And often such consequences are far greater and further-reaching than what we expect. The distant future is hidden from us, but we help to create it.

(*d*) The fourth difficulty in the elimination of war lies in the conviction that certain rights and guarantees for the vitality and development of civilized States demand a permanent military organization, and the right to use it when the moment

comes. From this it naturally follows that even with the existence of the League of Nations and the Pan-American Union, and within the framework of the Kellogg Pact, no State, however small, thinks of giving up its permanent armaments. The reduction of armaments is not universal disarmament; with the reduction of armaments admitted and obtained the military organization of the States will still remain, each with the force accorded it. Now, as long as stable armaments exist, the right of war can never be said to be outlawed and reputed a crime; only wars which have threatened and been avoided will be so considered, while those which actually come to pass will be held on either side to be wars of legitimate self-defence.

From the sociological point of view, the problem of true disarmament can only be regarded as an aspect of the law of the *rationalization of force*, of which we spoke in Chapter IV. This law is always in vigour; force, even in the international field, tends to become rationalized with the development of the International Community and its practical organization; and the present pacific tendency cannot but exert great influence upon the evolution of the type of armaments in use in the relations between peoples. It goes without saying that the resistance and difficulties to be overcome are immense and may well seem insurmountable, in view of the nature of armed force; but slow progress is of no slight value. Meanwhile, it is as well to make it clear that in every stage of the International Community the organization of armed force will be necessary. When war is wholly eliminated armed forces will be needed exclusively as police, in particular for work on frontiers, on the sea, and in the air. We have already admitted the possibility of the internationalization of the use of force for police work; and everything which can concur in the development of this function (mandates, the neutralization of certain territories, canals, and seas, and international controls) will facilitate the transformation of the function of State armaments.

In the case, also, of armed repression or resistance to aggression, carried out by State armies in the name of the States

Members of the League—termed in the Pact "mutual assistance", but more aptly, "defensive co-operation"—armaments assume a real international function in the maintenance of order and police work. And the more such functions develop the more will the necessity for States to keep their own armaments diminish, in relation to the lessening probability of war.

§ 58. In America, and in Europe also, there is a current of scholars and agitators who think to solve the problem of the elimination of war without recourse to the present League or to any international organization with coercive power. They call themselves the "Outlawrists", and emphasize their divergence from "Pacifists", or rather from "Conscientious Objectors" and "Leaguers" .

The "Outlawrists" hold that the League of Nations is maturing elements that will lead to an outbreak of war, that it has become a centre of political intrigue, that it is incapable of solving the problems of the day, and that it allows the military organization of the various States to subsist—nay, presupposes it in the event of the sanctions contemplated by the Covenant. According to this current, the elements of international life must be reduced to the simplest and most universally accepted lines, viz. to their legal aspects. What is needed is an International Code, a Court of Justice, and a Pact based on the Code and referring such disputes as cannot be amicably settled to the judicial decision of the Court. As a central point, the outlawry of war. All war, not merely war of aggression or war as an instrument of national policy, must be branded a crime. The Court would judge according to strict law and only on international questions, rigidly excluding all questions of a domestic character, or considered such by tradition or pact—such as questions of tariffs, emigration, or the like. All States would be equal and independent, and the bond uniting them would be merely the Pact they had signed, the Code they had approved, and the recognition of the authority of the Court, which they themselves would appoint. The judicial decisions

of the Court would have to be accepted and carried out in accordance with the criterion of good faith, without the use of any coercive means.

The system of the "Outlawrists" is based entirely on the good faith of States. If you take away good faith from relations between States, they say, you have nothing left. Even in the League of Nations system good faith has the last word. If this goes, the result is periodic war and chaos. Supposing the League of Nations were obliged to apply Article 16 of the Covenant, and invited the Member States to set up an economic blockade of the Covenant-breaking State: if any Government were to refuse to respect this obligation the League could do nothing save appeal to its undertakings—that is, to its good faith in observing the Covenant. In the same way, if a State refused to carry out the findings of an International Court, or Arbitration Court, it would commit a breach of good faith, and such good faith is the foundation of the system. The advantage, say the "Outlawrists", of their system is that relations between States are reduced to their simplest expression and least disputable terms, i.e. to legal terms, and hence their execution in good faith is facilitated by the absence of political intrigue and military preponderance.

The spirit of the Kellogg Pact corresponds to this conception; and its natural development would be compulsory arbitration, codification of international law, and a permanent court for all the States adhering to the Pact. We say the *spirit* of the Pact, because, juridically, there is a great difference between the two: the Kellogg Pact is a renunciation of war, implying, therefore, the existence of a right or power to make war; while for the "Outlawrists" war must be proscribed as a crime.

The "Outlawrists' " conception would be all very well if political controversies could be likewise eliminated and if every legal question had not a political content less easily resolved. If this were not so such questions would already have been solved by diplomatic and friendly methods. But the weak point, the real Achilles's heel of the "Outlawrists", lies in their own

assertion that if a State refused to accept the findings of the Court and resorted to arms against another State, the right of armed defence would revive, with all its consequences, in the form of active war. Unfortunately in such a case the other States would be powerless to help the invaded State, since, for them, the obligation not to resort to war would still remain in force, and they would have no contractual ties constraining them to the defence of one of the belligerents. In view of the "Outlawrist" system the prospect of possible aggression and the isolation of each State would provide much food for thought for the various Governments. As a natural consequence every State in order to be able to face any possible aggression would require: (i) adequate armaments; (ii) defensive and offensive alliances; (iii) the means of resistance in the case of active war; (iv) a policy aiming at security of frontiers, the mastery of strategic points, the command of economic resources, the prevention of any increase in power on the part of presumed adversaries, and so on. All this would resolve itself into the co-existence of two systems: the politico-military war system as in the past, enforced by each separate State; and the judicial peace system, as a permanent covenant enforced by an International Court. One cannot call this the elimination of war, nor does the "Outlawrist" method seem any more effective than the League of Nations. Nevertheless, we hold that this current has great uses in view of its propaganda against war and in favour of an international code proscribing war as a crime, and as contributing to the formation of public opinion.

We cannot approve of the spirit of complete mistrust shown by certain American currents towards the League of Nations, which is the practical experiment of to-day, and which corresponds to complicated needs of international life irreducible to mere legal formulæ. But we recognize that many criticisms of the League, its organization and activities, are reasonable and well founded. This, however, need not entail non-recognition of the League and almost the desire for its destruction, but only proves the need to improve and develop it.

To this more humane and rational ideal many statesmen on both sides of the Atlantic have turned their attention. There is a growing current of ideas concerned with the proposal to organize the world in Pan-Continental unions, which would later on unite in a true world league. The pioneers of this proposal are Alvarez in America and Coudenhove-Kalergi in Europe, the latter having promoted the Pan-European Union with headquarters in Vienna. This is a private association for study and propaganda. Its path is strewn with difficulties, but it arouses both interest and curiosity, and thus helps to form public opinion on international problems in general and European problems in particular. The followers of Coudenhove-Kalergi, starting from the idea that continents should organize on a basis of homogeneity of culture, race, political interests, and economic structure, divide the world into five groups: (i) Pan-Europe, embracing old Europe, with the exception of Great Britain and Russia, and including the colonies of the other European States, with certain exchanges and co-ordination; (ii) Pan-America, excluding Canada; (iii) the British Commonwealth; (iv) the Russian Federal Empire; (v) Eastern Asia—that is, China and Japan. The exclusion of Great Britain and Russia from the European system corresponds to the criterion of the prevailing interests. Nevertheless, between Pan-Europe and these two Empires there would have to be special co-operation and interdependence. Pan-Europe would constitute a true League of States on a political and economic basis, seeking not only the avoidance of internal wars by the usual means of arbitration and guarantees of disarmament, but also the creation of homogeneity or convergence among political and economic European interests, and the establishment of a barrier against eventual Slav and Asiatic invasions, which are considered the inevitable consequence of the decadence of Europe.

Although when Pan-Europe arose, it was in opposition to the League of Nations, to-day it has no longer any such tendency, and may be considered as a contribution to the idea of continental unions as the primary units in a more organic

federal League of Nations. It will be well to note that the world cannot be cut up into five parts to fit in with simple preconceived schemes. This would be to fly in the face of reality, which develops stage by stage with elasticity and intrinsic dynamism. The possibilities of a union between Russia and the Asiatic States, which are largely Mohammedan and jealous of their position, or between China and Japan, belong still to a very problematic future, and would contribute little to world-balance. Even the separation of Great Britain from Europe shows a lack of sense of realities. Notwithstanding, the idea of Continental unions, and the specific idea of a Pan-Europe, are by no means to be rejected. They contain theoretical and practical elements that may be utilized as a contribution to a revision of modern international thought and its practical materialization. In particular, the idea of a customs union embracing either the whole or part of Europe may become significant when the problem of the barriers between the States has reached its decisive maturity.

CHAPTER XIV

THE PRESENT SITUATION AND THE NEXT WAR

§ 59. While from the theoretical and historical standpoints the eliminability of the right of war is not only not at variance but in conformity with the laws of human progress, from the political and psychological standpoints it seems a remote, if not an unattainable, goal. That is why practical men, sceptics, and those who deem themselves men of experience, relegate the elimination of war to Utopia.

And already people are beginning to speak and write of the next war. Both friends and enemies of the League prophesy that it is certain, and will not be long in coming—the former in order to strengthen the anti-war organization of the League by the terrible vision of approaching war; the latter in order to reinforce the military organization in every country so that war shall not find it unprepared. We do not say that either current is moved by political reasons, but both, willy-nilly, help to create a morbid psychology among the peoples, and, in certain peoples, just that psychology which is the prelude to war, when a general war is looked upon as near at hand and inevitable. For when such grave forebodings materialize in a continual series of words and actions so as to form the political atmosphere in which we live, it is natural that the military General Staffs, responsible statesmen, currents of interests, banks, and industries should influence one another, turn and turn about, all preparing for the future moment that some trivial pretext—maybe without direct connection with what is to come, like the Sarajevo assassination—may determine for to-day or to-morrow the moment of a new war.

The development and growth of this new war psychology

finds only a feeble obstacle in the League of Nations and its work towards peace. Not that the League is not able to settle this or that particular problem, but because on every occasion, great or small, an emphasis is laid on the inadequacy of the whole League system, its method of organization, its activities, till it seems too frail an anchorage for the stormy sea of political interests and passions. Anyone showing faith in the organization of the League and in the possibility of international pacification, and believing in the Kellogg Pact, is to-day qualified as a visionary, whose delusions are detrimental to the interests of his country, weaken its spirit of resistance, and disturb the policy of a virile education of the new generations. Hardly was the Kellogg Pact signed than the Nationalist and Conservative Press decried it as a vain attempt at pacification, openly contradicted by facts such as the continuance of armaments.

This spirit of resistance to a better future and of attachment to a past based on military organization and periodic wars should not be reputed wholly irrational nor believed entirely mistaken. Underlying the consciousness of all human collectivities, whether these be nations or classes, big groups or small groups, there are subconscious instincts which correspond to real conditions—not as insurmountable, but inasmuch as they have never been surmounted; or else to traditional sentiments and values, which appear not as elements of the past, but carried forward into the present. This psychological state, which is widespread among all peoples and not only the peoples of Europe, hampers the work of the League of Nations, and creates an atmosphere similar to pre-war atmospheres of every epoch, so that the League itself seems useless—not that it does not exist and act, but as though at a given moment, at the outbreak of a war between the Great Powers, the rhythm of the League would stop, like that of a watch of which the mainspring has snapped. This state of mind hinders the establishment of the guarantees required by the States before proceeding to disarmament, and thus hinders all the preparatory work for disarmament.

This picture is by no means too highly coloured, but truthful, especially in respect of the parties of the Right, the Conservatives or reactionaries, and the Nationalists or Imperialists—that is, those summing up in themselves a predominant group of economic and political interests and expressing them through their newspapers, which are the most numerous, have the biggest circulation, and are usually considered the most reliable. This state of things should arouse not a little anxiety among the mass of the people, who for the most part stand aloof from this game of the ruling classes and are instinctively pacifist and averse to wars and warlike adventures. But the masses are either unaware or have not the means of counteraction, or else fail to understand the gravity of the situation. At the same time they are easily stirred up by feelings of national pride, which grow inflamed in every pre-war period, assuming different names, such as the rights of justice, the necessity of self-defence, or the dignity and honour of the flag.

The truth is that there is an international uneasiness, with causes that cannot be dissipated either at once or within a fixed time-limit. The war of the future may be psychologically presented as the war to resolve the problems that the previous war has not only failed to resolve but actually brought into existence. Thus the chain of wars continues.

The psychological error lies precisely in this: the belief that war can cut the Gordian knot of problems arising through the historical process of the International Community. Force and warlike oppression can obtain what treaties, awards, pacts, collective or judicial decisions cannot obtain. Doubtless war can provide the solutions of force. By the war of 1870 Germany took Alsace-Lorraine, and by the war of 1914 France reclaimed Alsace-Lorraine. But such solutions are never isolated and are not necessarily final, for war sows the seeds of new problems and creates the motives for the next war.

When we consider the facts of the present situation, we find unsolved problems, chaotic situations, economic and political disturbances and demographic requirements which

may well lead to a new war within no long lapse of time. A concrete study will enlighten us as to the principal motives of dispute among the various States, and will allow us to appreciate the anything but pacific consequences of the last war, the war to end war, which was to establish, by the victory of the Entente, a new world-order.

We can group such factors in three categories: (i) national rights and claims; (ii) demographic requirements; (iii) economic needs. This classification does not imply any real and objective distinction, for in the concrete of any specific question these elements may intermingle in different ways. It is merely a convenient method for a clearer appreciation. When we spoke of the wars of to-day (Chapter VI), we noted their general characteristics. Here we will seek their concrete elements so as to see to what extent war can assist the solution of present questions, or whether, on the contrary, it does not render their solution more difficult. This analysis will lead us to the cognate problems of revision of treaties, guarantees, and disarmament.

§ 60. National claims have always existed and will always exist. As we have seen, the concept of nationality as a legal basis and ethical right is recent, influencing many of the wars of the XIXth century partly because it was bound up with the concepts of freedom and self-determination. But this concept of nationality is confused and entangled with others, such as that of a closed economy, of the self-sufficing State, or of racial predominance, and so on. The causes of this confusion and entanglement must be sought in the actual situations arising out of long series of historical, political, economic, religious, and racial premises. These are such as to render the solution of many questions connected with those of nationality either difficult or downright impossible. Thus, when natural instincts lead to an appeal to the verdict of force by means of war, the victory of one side does no more than displace certain elements of the problem and replace them by others, without solving what in itself is insoluble or quasi-insoluble.

Under this aspect the idea of nationality, bound up with the irrational and sentimental idea of a juxtaposition of peoples as non-communicating unities, like so many watertight compartments, becomes a terrible Nessus's shirt, bringing death to the wearer.

The principle of nationality must, therefore, be taken as a relative norm, which has had its historical function and which within determined limits may have other functions still. The system of liberty, of respect of minorities, and of perfect equality within a State is richer in significance and more conclusive than that of rigid nationality. But this would mean the abandoning of racial conflicts, which presents many difficulties, but which is not unattainable, as is shown by the case of Switzerland. Such reasoning, however, has no force when a problem of racial pride or of economic interest or political power is bound up with that of nationality. From this point of view we may to-day classify some of the national motives disturbing the tranquillity of Europe.

One of the most debated and most difficult points is the Danzig Corridor, fifty miles long and twenty wide, from the North Sea to Poland, and which cuts off a part of Eastern Prussia from Germany and creates a mixed control in the Free City of Danzig. This settlement, the result of the Treaty of Versailles (Arts. 100–8), and subsequent decisions has created what is to-day known as the Danzig Corridor Question, since neither the Free City nor Germany can accept the present situation as final. Another question resulting from the Treaty of Versailles (Art. 88) and subsequent decisions is that of Upper Silesia, of which a part, including a section of the important mineral basin, has been incorporated with Poland. But for Germany this is still both a national and an economic question, and it may, therefore, furnish the motive for a conflict between Germany and Poland, which, if it developed into war, would not remain circumscribed and isolated, but would assume the character of a political *revanche*, thus drawing France, and maybe other countries,

into the struggle. Apart from this, what seems obvious in both of the above cases is that underlying the terms of the national dispute are important economic factors which war could resolve no better than a form of compromise. We do not say that the present solutions are perfect and the only ones possible, nor that other solutions may not offer in the course of the years and centuries. We cannot admit that the life of peoples can be static and final—a thing against reason. We only assert that any solution achieved by force, the result of a defeat, even the present solution imposed on the Germans, postulates a revendication by force which will gradually ripen in the psychology of the peoples concerned. If such a solution is instead accepted as a compromise, and as such susceptible of amendment by other and successive compromises, the psychological factors conducive to war are considerably lessened. To this point we shall return in dealing with the revision of treaties. Here we mention it in connection with these two special cases, because in these an indisputable war psychology is in course of formation on both sides.

The question of the *Anschluss*—that is, the economic and political union of Austria with Germany—has aroused much anxiety and many protests in France and the diplomatic opposition of Italy. But certainly a solution to the extremely difficult situation of Austria, whose political and economic life was seriously compromised by the Peace treaties, cannot be long deferred; nor can Hungary continue for long in uncertainty as to her constitution, and if she wishes to proclaim a king, it will not be possible to prevent her from doing so. The victorious Powers have still further to modify their war mentality.

Rumania forms another war-centre, with three burning questions—Bessarabia, claimed by Russia, in view of the fact that it belonged to her from 1878; the Dobrudja, claimed by Bulgaria; and Transylvania, once a part of Hungary. The question of nationality has not a conclusive force, owing to the mixture of peoples and races, so that the titles put

forward by each State may be opposed by counter-claims. Economic reasons, on the other hand, may render such national questions acute, and at any favourable occasion they may become actual and a source of conflict. Here, too, we find the same psychological state as we have already examined, and here, too, a war would not solve the problem, but only displace its terms; whereas while compromises provide only partial solutions, they nevertheless tend to allay the psychological state that leads to war or for long periods nourishes a State with the expectation of a decisive war.

There are other national motives of greater or less importance in Central and Eastern Europe from Germany to Italy. Some are felt as real "irredentism", others only as historical memories. The significance of such motives may be simply geographical or historical, neither actual nor liable to become so—for instance, the case of Gibraltar for Spain, or Malta, Corsica, and Nice for Italy. Or again, they may be felt by populations or States of the same race, as in the case of South Tyrol or part of Istria, which to-day belong to Italy by right of war. But these national questions and others still—like Cyprus, Rhodes, and the Dodecannese (Greek islands of which the first belongs to Great Britain, the others to Italy), or the Dalmatian coast, to which Italy has laid claim, or Macedonia, which is agitating for independence and is a field of Bulgarian, Greek, and Jugoslav intrigues—do not in themselves constitute war-motives if they are not exasperated and actualized by other motives and by the hidden moves which make up the fierce, secret game of the Great Powers. It is, therefore, correct to say that these questions may disturb the peace of Europe as occasions or pretexts to which a spark would set alight, but it is not correct to say that such questions can only be solved by wars, or to believe that wars can provide a stable and final solution.

The problem of European irredentism has many complicated sides, and cannot be solved save case by case, for each case demands a special solution. War apart, there may, nevertheless, be certain general lines of policy, but the populations and

States directly or indirectly concerned must be convinced that no war will be made or permitted to be made in order to change the present map of Europe, and that this must only be sought by peaceable and suitable methods. Then the action of the League of Nations will have immense value, and may take the form either of a decision compelling the Member States to recognize complete parity of rights to alien populations within each State, without any oppression or violation of their racial personality as expressed in their culture, religion, economy, and politics, or else of the transfer of the racial and religious minorities to the control and protection of the League, as has already been done, by means of the Peace Treaties.

If, however, national and irredentist questions are complicated by grave economic problems, a compromise becomes more difficult. The institution of neutralization may then serve, as in the case of the Rhine, the Dardanelles, or the Suez Canal.

In a continent such as Europe, with so great a length of history and so close-packed with varied civilizations, the goal of the migrations of peoples of many races, with its geographical diversity, between inhabited and cultivated zones, fertile and barren soils, plain and mountain, it is impossible for any State to pretend to national homogeneity; and in every case of racial conflict there is no choice save between a system of compromises subsequent on each successive war and a system of purely peaceable and voluntary compromises without war. The effects of both may be the same, but with the enormous advantage in the second case of avoiding both a chain of wars and the aftermaths of war during periods of peace that are rather periods of truce.

If one seeks to define the position of Europe to-day with regard to national problems, one must admit that these exist, though more or less concealed and denied. They must have an issue, and they will have it; how and when depends on the policies of the States and of the League of Nations, and also on the formation of a public conscience tending to diminish national overweeningness in favour of feelings of greater

communion between people and people. The mistake lies in denying such problems, or in refusing to face them. But to each day its own evil. When new impulses have ripened or actualized these questions a way will have to be found in which they can be peaceably resolved, even if only provisionally. In this way alone can national motives fail to precipitate Europe into war.

From this point of view the Locarno Pact has exceptional importance, and is a proof of the gradual adaptation of the peoples to peaceful compromise. Alsace-Lorraine is no longer a national, territorial, or economic question for the two peoples concerned as in 1870 and after, and the Rhine is no longer a military frontier. Here the compromise has brought a solution. It is true that both in France and in Germany there are germs of future misunderstandings and pre-war states of mind, but apart from the exaggerations of political parties and irresponsible persons, the effort made assures the peaceful development of the relations between the two States. Any attempted revenge on the part of Germany would be directed against not only a coalition of States and a treaty established by common accord, but a considerable zone of public opinion in Germany itself.

The idea, therefore, that was put forward in the Assembly of 1927 of the League of Nations that other "Locarnos"—that is, systems of compromises and mutual guarantees—should be arranged in order to settle the various questions resulting from the war or in any way actual in the relations between States, is a most useful one. It would mean the consideration of such questions on a peaceful and practical plane, and the extinction of national hatreds, rancour, and arrogance.

§ 61. Graver than the purely national questions are the economic, political, demographic, and colonial questions. We will endeavour to define them. The balance of power in the Mediterranean is necessary to the interest of Great Britain to secure her road to India without let or hindrance from any other Power. Gibraltar, Malta, Cyprus, Suez, Mesopotamia

are necessary to her in varying degrees. France and Italy have a prevailing interest in the Mediterranean, which is also the goal of all the other States, from the Balkans, Turkey, and Russia in the East, to Spain in the West. The North African coast is a zone of European colonization. Egypt, the Sudan, Abyssinia, are involved in this game, while Asia Minor tends towards it. It is clear that small causes like the bombardment of Corfu in 1923 may constitute the motives of great conflicts. There has been no lack of colonial wars such as those of Morocco, or the almost perpetual wars in Libya against the Arabs and Senussi, or of troublous questions such as that of Tangiers.

Another difficult point is the Pacific Ocean. The Chinese question is still unsolved. The civil war continues, and behind the Chinese generals are the influences of England, Russia, Japan, America, and France. The play of interests is on a vast scale. Connected with the Pacific is a grave demographic question, that of Japan. The Japanese islands are densely populated, and it is impossible for them not to give rise to a demographic movement outside Japan. A possible outlet would be Manchuria, but Russia on this side requires an outlet on the sea. The requirements of the two countries are intrinsically conflicting. Japan has the outlet of Korea, but this is not enough. The Japanese might emigrate to Australia or California but for the uneasiness of the respective Governments, which are afraid lest populations of another and numerically superior race should become dominant or disturb the position of the dominant people. A conflict between the United States and Japan is always on the cards, though neither country desires it. The Governments and General Headquarters take it into their reckoning. England has returned to the Singapore Naval Base after having once abandoned it—with peaceable aims it is true, but it may serve a military purpose. The need for commercial expansion, for old and new markets, for raw materials, urges the countries with a high economic potentiality towards the centres to be exploited, towards the colonies or the countries apt for direct or indirect colonization. This not

only supposes suitable military machinery, but permanent war preparation.

The American continent likewise shares in the fear of war in the near future, not only because of its contact with the European Powers and its interests in the Philippines in particular and the Pacific in general, but also because of difficulties in Central America. Mexico and the little States of the Caribbean Sea are in a state of disturbance, and the United States would expand in this direction in accordance with an underlying hegemonic tendency, which, though not avowed—in fact, denied—is none the less real and present in their policy.

Finally, the overflowing populations like the Germans and Italians cannot be contained within their frontiers and must find an outlet for their activities. And if migration to the civilized States is hampered by economic or political reasons, or they have poor colonies which cannot be developed for want of capital, as in the case of Italy, or have no colonies, as in the case of Germany, and, in addition, are wanting in raw materials—then conditions are on the way to becoming favourable to war. To all this must be added the difficulties of the high cost of living, exasperated by the debts of the past war and the high tariffs, and it will be seen how war-motives are being accumulated—resolving themselves, for the moment, into the psychological state in which another war is feared as inevitable. Therefore the League of Nations, the various Locarno and Kellogg Pacts notwithstanding, scientific laboratories, men of genius, masses of workers trained in explosives factories, and public or secret military organization still labour to prepare the terrible engines of torture of the next war.

Of all these latent war-motives we hold that not one can to-day be considered as actual and actualized. The most serious is the demographic question of the Japanese, Germans, and Italians. This may be regulated for some years more, but it cannot be ignored or hampered without general evil results. We believe in the law of adaptation as one of the most important and fruitful of natural laws, and for many reasons we

believe also in the necessity of an intermixture of races and peoples. Like closed castes, closed peoples grow sterile morally and socially. The demographic movements are for humanity what the movement of the tides is for the sea; the greater the progress of society, the better this movement can be controlled; but to prevent it is madness. All civilizations have important migratory origins and developments. National and racial egotism must give way before incoercible exigencies. Will this be attainable by the path of conventions, understandings, and peaceable means, or will means of force be required?

Here, also, the state of mind of the populations concerned is of the greatest importance. For an Australia that can receive many millions of men, and for a North and South America needing a new influx of emigrants, peaceable means leading to an understanding with the foreign populations, and establishing the conditions likely to balance the requirements of emigration with their own interests, must be far more worth while than the risks of a war with Japan. The same may be said with regard to the European repercussions of the difficult conditions under which Germany and Italy will be labouring in a score or so more years, if they are forced to bottle up their overflowing populations within their frontiers.

In substance there is no dispute between States that may not lead to war, and there is no dispute between States that cannot be more or less kept within bounds by peaceable methods. But meanwhile these disputes and the hidden or deeper-seated questions of the conquest of economic resources, markets, and raw materials, are considered as war-motives, since war is looked upon as possible, legitimate, and necessary, and under this aspect is continually prepared for and feared. The populations like Switzerland or Holland, which have no desire to resort to war for the settlement of disputes that may arise, do not have to estimate in any way for war, and therefore do not cultivate the true war-psychology.

But when so many motives of dispute among States are presented to the consciousness of the peoples as impossible of

settlement, and only to be settled under a system of domination by means of war, by victory and defeat, then war, though deplored and hated, reappears. It becomes an obsession, though none can tell if and what its gain or loss.

§ 62. The basic problem, then, lies in the possibility that national, economic, demographic, or political disputes in general may come to a head. It is absurd to think that the world can stand still at a given point and become completely static. Human activity is a process, and the stages of this process change with the succession of events. The mentality of Wall-of-China treaties and of dogma treaties, as the Treaty of Versailles of 1919 is for some people, is anti-historical and anti-rational. Treaties have a value in determined circumstances, and when these change the treaties must be changed likewise, either by mutual agreement, or by arbitral award or League decision, or by means of war. It is clear that this assertion does not mean that the map of the world must be remade at every new moon, but only that the length of time a situation may endure depends upon the persistence or mutations of the factors by which it is constituted. The Treaty of Sèvres of 1920 with Turkey was never enforced, and was replaced by that of Lausanne of 1924. The Treaty of Versailles is being enforced, but in its enforcement several elements have been changed either in the letter or in the spirit. It is a good thing and a necessity that in the Covenant of the League of Nations there should be the provisions of Articles 18 and 19 concerning treaties—Article 18, which establishes the obligation of registering all treaties and international commitments with the League, failing which they cannot become binding, and Article 19, which contemplates the revision of treaties in the following very cautious but significant terms: "The Assembly may from time to time advise the reconsideration by the Members of the League of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world."

It is reasonable both to attribute stability to the treaties already signed and the conditions that have been achieved, and to adjust eventual disputes or nip them in the bud before they have time to excite the populations. A wise balance must be kept between static and dynamic tendencies, but the importance and office of either cannot be ignored. It is certainly hard to get a State that has won a position to abandon or modify it without the constraint of a law of victory, but the League organization lessens the difficulty of what would be hard to obtain if two individual States were left to themselves to settle their relations. The dispute between Poland and Lithuania if it is not definitely settled has certainly made progress, and that between Greece and Italy was able to be settled by the mediation of the Ambassadors' Conference, to which it was referred. The solution of the dispute over the occupation of the Ruhr, and the establishment of the Dawes Plan and the Locarno Pact, is more significant, and forms a politico-economic complex of the first importance.

On these lines it will be possible, by the provision of a natural outlet, to anticipate and check in time the growth of the war state of mind which arises through the presence of actual or readily actual war-motives—that is, by the recognition that a question exists, and the quest for and proposal of the most suitable remedies for the case. In many instances provisional solutions are best, and generally a compromise saves national pride. Arbitral and judicial methods for the settlement of inter-State disputes are therefore rapidly gaining ground in the psychology of the peoples. The Kellogg Pact can be regarded as one of the most important signs in this respect.

But to attenuate the war-psychology it is necessary to face the problem of disarmament. This is, above all, a psychological problem, for all understand that, given scientific progress, peace industries and the athletic training of youth, men and materials in a short time can be turned from the uses of peace to the uses of war, and all know well that a minimum military, naval, and air organization for police purposes, which will

always be indispensable, may furnish the first skeleton cadres for war mobilization. In the last war there were 18,000,000 men on the front and 37,000,000 under arms. The figures in any future war may be greater still. Therefore the problem of disarmament is a psychological problem, that of the orientation of peoples and States towards an international system eliminating war. If this orientation is wanting, the problem itself in its terms and solutions will have quite another significance, and will remain within the setting of eventuality of war. The present League tendency to bind up the problem of disarmament with that of guarantees, to which we have several times referred, is therefore right. For only in a state of comparative security can an initial type of disarmament be reached, to mark the beginning for further steps.

The psychological effect of disarmament would be unquestionable, but another good result would follow in the shape of decreased war expenditure, which would mean also that there could be no increase. The six principal States from 1908 to 1914 increased their military expenditure by £24,000,000 a year, when money was worth far more than now. And this race of armaments is a political necessity when there is no conventionary limit, for every State fears to be taken at a disadvantage in the terrible event of war.

Technical and political difficulties are considerable, and seem in some points insuperable—at least for the present. For the land armaments it might be agreed that the number of effectives should be limited, with a proportionate limitation in the number of officers; but the countries where there is conscription refuse its abolition and would have instead only a limit in the period of military service. This problem is of interest, above all, to Continental Europe, and a just and reasonable solution is especially in the interest of France, with her constant fear of a German revenge.

But there can be no real endeavour to solve the problem of disarmament by land unless some basis of agreement has first been found for the reduction of naval armaments. These were

regulated at the Washington Conference (1921–2), by the five Powers concerned, as regards battleships and aircraft-carriers, but not as regards cruisers and submarines. The three-Power Conference (Great Britain, Japan, and the United States) held at Geneva in 1927 failed to accomplish its purpose owing to the impossibility of resolving the technical problems of each State in connection with the type of armaments. Subsequently the Governments of Great Britain and France have made a naval agreement (1928) as a basis for preliminary discussions for a third conference, but the failure of this was even more striking, on account of the decisive opposition of the United States.

An agreement from the technical standpoint seems unfortunately impossible, and this fact will only serve to increase the anxiety of the public concerning any obstacle in the way of disarmament. It is felt that the path chosen for this end is not the right one; before attacking the question from the technical point of view it would be better to solve the political problem of the rule of the seas and of the necessary guarantees for the maintenance of their freedom. The last war brought about a total change in the existing regime, which certainly was not the best possible. In the present circumstances Great Britain, even if neutral, would starve in the event of a blockade; and, on the other hand, the United States without the freedom of the seas would have their industries ruined. From different standpoints the same may be said of the other Naval Powers. The fundamental problem, therefore, is that of the rule of the seas; once this is solved by means of agreements and guarantees, the solution of the technical problems of disarmament will follow.

As regard military air service, it has been proposed to limit the number of aeroplanes. France upholds a limitation of total horse-power. An agreement seems to have been reached by a combination of the two proposals, but no agreement is contemplated to prevent the military use of civil aircraft.

The proportionate limitation of military expenditure in the annual budgets has received the general consent of the Pre-

paratory Commission of the Disarmament Conference, and the British proposal to present the League year by year in an established form with a communication of actual military expenditure in the budget was accepted, though with certain reservations.

It is more difficult to establish an international control over the armaments of each single State. This principle is in the Covenant, but it is not acceptable to many nations, who would prefer a reliance on the good faith of the signatory States of the Disarmament Pact.

These, in brief, are the preliminary questions to the substantial question—the estimation of what military forces are necessary to each State so as to meet its peculiar requirements without disturbing a future military equilibrium on land, sea, and in the air; and that other important problem, up to what point the principal non-member States, such as the United States and Russia, will consent to take part in an International Disarmament Pact.

It cannot be denied that important progress has been made. There is the psychological fact of Government good will, the result of a well-developed, though still only partial, pressure from public opinion. But there are many interests, prejudices, and even groundless preoccupations to be overcome before there can be a practical development of the programme of limitation of armaments.

Article 8 of the Covenant establishes as the criterion for the reduction of national armaments the "lowest point consistent with national safety and the enforcement by common action of international obligations". Now there are not a few who believe that these limits allow too narrow a margin for big reductions. To-day in practice the question of armaments reduces itself to a question between a few States. After the disarmament of Germany, only five nations count from the naval point of view—the United States, Great Britain, Japan, France, and Italy; while from the point of land forces the predominance lies with France, Russia, Italy, and Poland.

The other States would readily follow any scheme of reduction. But most of these States have special requirements for national safety, or would have to bear the heaviest burden of international obligations imposed by a common action. Meanwhile it is necessary to distinguish between a police and protective service and a strictly military service for warlike and offensive purposes. This distinction brings us to a series of considerations concerning the future regulation of force in the international field. England needs to assure and protect the sea-ways between the Mother Country and Dominions or Colonies, both for the sake of the life of the Empire and to supply herself with food and the raw materials necessary for industry. This is not a warlike service, but implies a problem of sea police only, and would have to be treated in agreement with the other States concerned and with the intervention of the League of Nations. From this point of view it would be necessary to consider the possibility of a League of Nations flag, and of the internationalizing of determined seas, territorial zones, or strategic points, and of special sanctions to guarantee the enforcement of the law.

The same methods would have to be applied to disputed and dangerous zones forming permanent sources of dispute and jealousy between the States. That is, such zones could be internationalized under special bodies of international police.

The trend would need to be towards the transformation of military forces into police organizations, national and international. If a decision is reached proscribing the right of war entirely and without reservations and making it impossible for the States to make war, there would be no reason for each State to have any real military organization of its own, or anything more than a police force. And as in the interior of a State there are the local police depending from local bodies, and the police depending from the central government, thus in the organization of the International Community there would have to be a State police and an international police under conditions of true political solidarity between the States.

A student of psychological and social problems, William McDougall, maintains that if there could be an interstatal convention internationalizing aviation and forbidding any other aviation, public or private, it would be possible to create a network of communications and a body of police able to serve the best purposes of humanity and to prevent practically any war, to punish any treaty-breaking State, and to prevent war even if it were already declared and begun. In another form, a similar proposal was brought forward by M. de Jouvenel.

There is no doubt that a great transformation is needed in modern thought and in present civilization in order to reach so wide a solidarity of men. But this is not a Utopia. Once the formative principle of the International Community is established it will be the jumping-off ground for further and wider activities, like a scientific discovery, such as that of steam or that of electricity, the applications and developments of which were immense and undreamed of. The principle of a league of States is a lever like that of Archimedes: "*Da mihi punctum terramque coelumque movebo*".

CHAPTER XV

THE ECONOMIC STRUCTURE AND THE MORAL FACTS

§ 63. Up to the present one of the gravest obstacles to the elimination of war has been the economic trend. We say up to the present because even to-day it constitutes an obstacle, though there are some signs portending a possible, if slow, transformation. To-day, indeed, the economic structure overflows the narrow limits of the national State, and tends towards a federative and international unity of wider range.

Meanwhile the effects of the Great War must be overcome. In economy they were enormous and lasting. The monetary systematization of the various States is not yet complete, but shortly will be. Nearly ten years of difficulties and catastrophes have produced a real redistribution of wealth, and this cannot yet be stable and final because of the flux and reflux determined by great displacements in the world of economics as in the world of physics. In the field of production this displacement has upset the pre-war equilibrium as regards both production and markets, hence a stifling intensification of protection reaching in certain cases prohibitionist pitch, as though there could be self-sufficing States with closed and national economic systems. In a large measure this tendency is twofold—a psychological tendency due to the war, mistaken in method, encouraging general illusions and acute prejudices, but representing the instinct of each country to seek its own safety; and a plutocratic tendency seeking the defence and development of private interest by means of customs barriers and fiscal privileges, so as to maintain economic positions achieved or improved during the war. This in substance is the aim of capitalism; to throw the greater burden of the war on the mass of the consumers and weaker classes, to consolidate the concentration of wealth in a few hands, and to regain with the greatest possible ease and speed stagnant markets and lost

economic positions. The Governments, fast in the grip of a capitalism that can easily avenge itself, allow it closed and artificial customs regimes. The dangers and evils of these are not immediately apparent, and at the same time there are nationalist political currents, which play upon the feelings of peoples tormented by long unemployment, and weave an inextricable web of illusion and egotism.

The disorder in production and the customs barriers have been increased by the disproportion between war debts and the capacities of the debtor countries. During the ten years since the war considerable efforts have been made, both to define the amount of debts and credits and to frame plans of payment and amortizement. Germany's situation was the most serious, and the Dawes Plan is an attempt at systematization which, while it cannot be considered final, approximately corresponds to the facts of the case. There has been a more or less satisfactory reorganization of the finances of the States of Central and Eastern Europe, old and new, from Austria to Poland, Rumania, and Greece. The plans agreed upon in Washington and London for the funding of the Italian, French, Belgian, and British debts, if not wholly advantageous, are partially so, inasmuch as they restore an equilibrium that had been shattered utterly and was tending to ruin. Nevertheless, a few years will show that all this financial reconstruction rests on unsound foundations, and future crises will provide the occasion for an inevitable revision of the plans of to-day. Well, a stable monetary system, the reduction of debts and reparations to a minimum, the reduction or abolition of protective duties, are the necessary premises for an economic structure able to prepare, ease, and develop a trend towards an international organization in which war will be abolished. And so long as there are factors to disturb economic equilibrium there will be political currents accentuating the nationalist tendencies of States in opposition to internationalism, and all the uneasiness and psychological motives that give rise to war will continue to subsist.

Meanwhile, we must note the considerable development of capitalist enterprise on an international plane. Not that this phenomenon is confined to the post-war period or even to modern times. The frontiers of the State have never been the frontiers of trade, industry, or banking. But to-day this fact has wider bearings and greater importance, and has become more rationalized, inasmuch as the power of capital has developed and continues to develop. And while there is a form of capital that, like a hot-house flower, needs customs barriers for its development, there is a capital which, on the contrary, needs elbow-room, seeks to unite with other capital beyond political frontiers, and thus reinforced to overcome adverse competition and firmly to establish its power.

There are those that fear the enormous and ever-increasing power of international capitalism, which overflows frontiers and geographical boundaries and comes near forming a State within the State. In the same way men fear a river in flood, striving to safeguard cities and country-sides against it, digging canals and building dykes, and carrying out other defensive works, but at the same time making use of it for navigation, irrigation, and motive-power. The great river is a great source of wealth, and may also be a great source of danger. In a large measure it rests with men to avert the danger, but what does not rest with them is the existence of the river. Thus it is with the great river of international economy. Its proximate origin is the big industry of the last century, its development has taken place through scientific inventions of the greatest interest and importance in physics and chemistry, and it will grow still more important and gigantic by using the great forces of nature. No one can rationally oppose this development, but all should seek to turn it to the common advantage.

It is clear that the wider the circle of economic exchange, the more intense becomes the rhythm of production, the greater the development of industrial enterprise and banking institutions, and the wider the range of political life, which cannot help reflecting the economic structure. In the feudal

period the prevalent economy was agricultural and artisan, while industry was small and domestic, and few centres engaged in trade. The boundaries of political life were narrow, the empires and kingdoms represented a series of particular units held together by the frail bond of feudal vassalage, which was acknowledged by oaths of homage, tributes, or rights of regalia. A series of privileged and autonomous bodies lived a life of their own, shut up within themselves. Local customs, barriers, tolls, serfdom, and economic fetters localized a poor and struggling industry. The development of the economic system with the discovery of the New World and the inventions of the XVIIth century marked the beginnings of the great administrative State and the loosening of economic fetters. These disappeared with the advent of big industry and the conquest of liberty, when local frontiers were carried to coincide with the State frontiers, and the idea grew up of the Nation as a political and economic unity. Save in England, as a result of her special position, mercantilism and protection, with short interludes of free trade, were the fundamental factors in this evolution.

In the last twenty years of the XIXth century long steps were made towards a new widening of frontiers, and the war has marked the decisive trend in this direction, the more significant inasmuch as the world of the past strives to raise barriers and to constrict collective life within the national circle. We have here the same conflict that followed the Napoleonic Wars, when the States of the Holy Alliance reinforced their moral and economic frontiers even against new inventions, sought to maintain the restriction of markets to provinces or cities, fearing even the unity of a national market, inveighed against the liberal movement with its irrepressible economic content, and strove to protect small peasant industry against the rise and development of big industry. The widening of economic interests and political life between the first and second halves of the XIXth century overthrew all the restrictions and the political and economic hindrances of the *ancien régime*.

To-day is the same. National interests, great and small, have risen up against the larger economic frontiers, embracing States and continents; but the movement is irrepressible, and the enlargement of economic frontiers marks the beginning of an enlargement of political frontiers. Whoever fails to see this is not awake to realities.

When we speak of an economic movement we mean not only that of capital, which is fundamental, but that of labour also. We are accustomed to this distinction because big industry has furnished the motives for a visible and combative workers' organization on a national and international basis. From our point of view all factors of production come within the economic setting and have their political influence. The working classes as such tend to mark a special international rhythm, organizing class interests and political interests in an anti-war and pacifist sense. Through the International Labour Office, attached to the League of Nations, the problems of the protection of labour, of the moral and cultural development of the worker, and the legislative measures or international commitments required, are studied and considered on an international plane. It is true that up till to-day the organized working classes have supported protectionist tendencies and restrictions to emigration, and have nearly always been in favour of an artificial economy. Maybe they will continue to do so for no negligible period. But this has depended, and still depends, on the conditions of the labour market and the difficult and still incomplete conquest of more humane and juster conditions of life and work. On the formation of the great cartels, of great industrial understandings of an international character, the workers' organizations have taken fright, fearing, and not altogether without reason, that they will be overwhelmed. That such combinations may be controlled is indisputable, but that they can be prevented is unthinkable. They are the vanguard of a political movement towards wider frontiers, on the principle of a transformation of the general economic situation. The workers' mentality in the face of these economic developments is, on the one hand, still

nationalist and conservative; on the other, revolutionary. This ferment is not without its uses in the wide sphere of the development of international forces, but till class prejudice can be overcome, and till there is a co-operation of all factors of production, the workers' movement will lack its due efficacy. Notwithstanding, the predominance of big world economy in the international field is immense, and its political influence uncontested.

§ 64. Given the irrepressible tendency on the part of big economy to become international, we are faced by a problem worthy of study. Capital and labour are great forces that are acquiring enormous efficacy, and capital far more than labour. Will not the time come when they will dominate the organs of political power, and become the prevailing and ruling class over and above national interests, leaving the middle and lower middle classes, the consumers, the world of local economy and industry, without sufficient means of resistance and self-assertion in the political field, inasmuch as the State would be dragged at the heels of international economy? This problem is not new. It returns to life every time the economic circle expands beyond the political circle, so that there is no longer convergence but divergence between the interests of the two, because such an event implies the existence of wider and vaster forces escaping the power and control of the State. In order to defend itself against an extraneous power which might come to hold an economic monopoly, and which would be always irresponsible, the State has the choice between two methods: either it may strive, but without success, to hinder the development of such a power; or it may unite with it, striving to break through the grip of purely economic interests by directing them into the broader channel of common interests.

The struggle between the influences of diverse and conflicting economies within a State gives rise to the development of the forces of the ruling classes, which give their stamp to the political tendencies of the Government and determine the

features of the regime. Under present conditions the governing class is not always the ruling class, for often those responsible for the Government are the political and electoral product of a series of economic combinations. But in all the great industrial countries there is a real and effective tendency towards a renewal of political methods in order to assure international capital against such upheavals as wars and revolutions bring, and to guarantee it against communist tendencies and nationalist excesses.

All these movements in the interior of each State and in the international field are almost imperceptible when taken as a whole, whereas they are more easily noted in particular and concrete instances, which may seem finite and self-contained. The various practical questions give rise to conferences, understandings, and congresses, revealing themselves in long debates, till to the superficial observer it may seem that there is never a step forward and sometimes a step backward, whereas if one views such questions as a whole in any determined period one may observe slow but sure steps in an international direction.

The last fifty years have advanced more in this direction than long centuries before, and to-day we are able to realize how much swifter will be the rhythm in the half-century to come. We have mentioned the various international unions of an economic nature which have rendered rapidity and security of communications possible, and also the initiative taken by the League of Nations in the matter of economic post-War problems. The League of Nations was born in an environment of "interventionism", and has asserted this principle not only as regards the exceptional cases of certain States, but also in the field of labour protection and in respect of the technico-legal, politico-financial conditions of the various Member States.

This interventionism will have a still greater development, and therefore the public bodies, national and international, will be the pivots of the activities and also the intrigues of the

great economic forces, just as the dynastic houses and absolute monarchies of the XVIth and XVIIth centuries were the pivots of the great economic forces during the period of first transformation from a feudal economy to a national and colonial economy. But the intervention of the public powers, whether Municipality, State, or Inter-State, is only a phase in the economic cycle, that of readjustment of equilibrium. When it has achieved a sufficiently stable equilibrium—which will never be wholly final—then the economic system will tend to expand, and for this very reason will demand freedom and repudiate all control till the new cycle has run its course and the time is once more ripe. Then there will be a fresh call for the intervention of the public powers and renewed support for a new interventionism.

It is clear that no economic development, no political process, is lineal, but, on the contrary, is complicated, determined by circumstance, with crises, halts, retreats, struggles, and contradictions. Hence sometimes it may seem to be going back on its path at the very moment when it is going forward. The economic experiences of the ten years before the Great War and during the war are of decisive importance. During the war it was possible to submit the whole civilized world to an artificial economic regime, with great State and interstatal organizations for the production, transport, distribution, and control of goods of any nature, changing even the accurate correspondence between the purchasing power of money and the price of goods. It is true that the consequences of this artificial regime were felt after the war. But the test of a direct intervention of the public powers in the economic world had been passed with the least possible damage and undoubted benefits. The post-War period has provided us with another experience, the contrary: the breaking up of the economic solidarity of the peoples from 1919 onwards has shown the necessity of such solidarity in the world of to-day, which would otherwise go to pieces, returning to primitive economies, pauperism, and insoluble crises. The task begun in 1921 has

been the restoration of economic solidarity among the States, including Germany, including the British Commonwealth and the United States, and including Russia.

Russia has attempted a vast experiment in Communism, which to-day, indeed, is no longer Communism but approximates to State Socialism. But Russia could not isolate herself, nor could the other States organize against her the so-called *cordon sanitaire*. Russia is little by little finding her place again in the economic solidarity of the world, though by a devious and broken path, and at a higher cost than need have been. For Russia, too, has gained the experience that economic solidarity is an incontestable fact—an experience of immense value both for her and for other States and parties.

The chief experience has been that of breaking down the belief that to-day there can be States economically self-sufficient, and that a State can gain control, even by armed force, of all the sources of raw materials necessary for the development of its industries. Just as no State to-day can make war outside interstatal solidarity, no State can create an economy outside interstatal solidarity. But we may consider war solidarity to have been shattered by the Covenant of the League of Nations and by the Kellogg Pact, whereas, on the contrary, economic solidarity is developing. The League of Nations has made a practical contribution towards it by the Dawes Plan and the financial systematization of the various States, and it is hoped that hereafter its contribution, by means of economic world conferences, will be greater still.

When this solidarity is more developed even economic and demographic questions will more readily find a peaceful solution, for war would create a profound disturbance in the great economic interests that will have been consolidated during peace.

To-day no one any longer dreams of war between the different States that go to form the United States of America, or between Great Britain and the Dominions, not only because of the political ties between them, but also because of their

economic bonds—that is, because such peoples are brought together by a definite political and economic regime. This is what will happen with all civilized States when their economic solidarity becomes the political reason for the commitments and bonds uniting them. The way will be neither short nor easy, but the first steps have been taken and the experiences necessary to point the way have already been gained.

§ 65. Never have economic forces alone or political policy alone sufficed to influence the psychology of peoples without the impulse, aid, and power of moral forces. These, on the contrary, transform those same political and economic activities and raise them to their own higher order, giving them the imprint of their own greatness. When the peoples were stirred up by the principle of liberty the impulsion was given by their material needs; but they idealized these very needs and interests, seeing in them the conquest of the rights of man and of freedom in civil and political life. It was thus with the United States when they were still colonies (they threw off the European yoke, and won their political and civil personality at the same time as their economic independence); and it was thus with the national movements of Greece, Belgium, Italy, and Germany.

Urged by the wider economic development that better corresponds to the ever-increasing needs of the peoples, tormented by the crises of the Great War and the high cost of living, the world stands at the cross-roads between a national ideal and an international ideal. It feels, notwithstanding, that a new moral conquest has to be made. Nationality, fifty or a hundred years ago the ideal to be attained and won, together with freedom and independence where these were wanting, for many to-day no longer forms an ideal and practical synthesis. It is no longer a goal, it no longer delimits and exhausts the activity of the peoples; for the greater number it represents a conquest of the past. To-day the national idea may be intensely felt by "unredeemed" or racial minorities aspiring to

autonomy and freedom, but it remains limited to particular cases. Man does not stop short at the goal attained, for he is spurred on to ever fresh desires. The day that he begins to understand that a real and stable international organization is a feasible idea, to this his eyes are turned, and this becomes the ideal before him.

But the "Internation" is not an end in itself, just as the "Nation" is not an end in itself. These are intermediate ideas and facts leading to an ideal and practical goal, and to-day the ideal and practical issue is the "Abolition of War." In the past, too, this ideal had its exponents, but only among theorists who were looked upon as visionaries, or among particular sects like the Quakers, or moral and political currents such as the Tolstoyans and pacifists. There were confused ideas, obscure feelings, a medley of individualist anarchy and mystical humanitarianism, but no theoretical and practical conception capable of gaining wide support among thinkers and among the masses. But when the ideal of the abolition of war was linked up with practical international organization, then it passed from the realm of Utopia into that of a possible partial materialization, allowing glimpses even of complete fulfilment. For this reason there is to-day a moral trend towards the League of Nations, towards the Kellogg Pact, and towards the outlawry of war as a high aim attainable on earth.

It is easy to understand why to-day Geneva should be a target of love and hate. Those who secretly or openly work against it do not do so out of a love of war for war's sake—at least, the generality do not—but because they hate the idea of a super-State, fearing a diminution of the independence of the State and of the right of the nation to a political personality of its own. They believe that war is an indispensable and indestructible instrument of national greatness and security. Thus they create an antithesis, the *Nation and War*, as opposed to the *Internation and No War*. This antithesis is profitable, for the struggle between conflicting ideas, tendencies, and interests liberates vital energies, and it is thus that conquests are achieved.

Indeed, an ideal that has never been fought for is an ideal that has failed to materialize. Humanity seeks now to achieve what it has never been able to achieve in the past—to achieve it in the fact of such mighty prejudices and interests that no one should wonder if it meets with opposition, nor if a long time and long trials are required, nor if its very achievement brings with it the drawbacks and upheavals accompanying all far-reaching solutions. So great a transformation can not be merely a legal fact, or the product of an international agreement, like a diplomatic Protocol. It means a real transformation in a vast area of social life both national and international.

The Nationalists, Conservatives, and Imperialists, who resist the progress of the League and cling fast to sovereign rights and national arguments, represent a retrograde movement not only in the international field but in the domestic, political, and social field also. They would set up a barrier against any logical development of past achievements in freedom and democracy and in social economy. The idea of the Nation, which in the past represented an advance on that of a dynasty or an aristocracy, represents to-day a recoil from the ideas of liberty, democracy, and internationalism. And whereas yesterday the idea of a Christian League of peoples seemed a return to the Middle Ages, to-day the Christian ideal is bound up with that of a peaceful League of peoples, as against a nationalism tantamount to a veritable paganism.

All the discussions as to the future type of the League of Nations, whether it will become a super-State or remain an inter-State, whether it will be able to acquire an autonomous personality with power of its own or must remain the mere resultant of the Member States, serve a practical purpose if they are brought into relation with the type of the modern State, according to the prevalence in modern States of Nationalist and Conservative, or Liberal, Popular and Democratic, or Socialist and Communist tendencies. But whatever the oscillations of policies and of single States, policies are already caught in the international machine, and are affected

by the ideal of the abolition of war. Once the peoples have entertained this ideal as something possible it can never fade from their minds and hearts. Even when war-fever, and national passions are seething there will be parties and responsible men who will rise up and oppose any eventual war in the name of a concrete reality, the League of Nations, the Kellogg Pact, and the Arbitration Pacts; in the name of an ideal, *the Internation and No More War*.

The two ideas are bound up together because war cannot be abolished save in an international system framed for this purpose—that is, by the substitution of the union and international solidarity of interdependent States for the separate action and independence of sovereign States. This is the necessary condition for the attainment of that term of the historical process which means the elimination of war as a legal institution, because it will no longer correspond to the new structure of the International Community.

It must be understood that the idea of such elimination will have an intimate development of its own. From a union of States of the same civilization it will spread to States of other civilizations, from sovereign States to colonies, from consentient groups to dissentient groups, and the process will be long and laborious.

But what does this matter to humanity as it progresses? Was the abolition of slavery the work of a few years? Were there not periods and zones of slavery even in the XIXth century? Are there not such even to-day? But no one denies that the moral and religious seeds of the movement for the abolition of slavery were sown two thousand years ago with the appearance of Christianity.

To-day psychological and economic conditions have made the moral idea of a pacific solidarity of peoples a question of the day, which has taken form and materialized in the League of Nations and the other State Unions, in the Kellogg Pact, and in the practical efforts for disarmament and the abolition of war. In the sphere also of culture and ideas efforts are

needed to uproot an age-long prejudice, to create the conviction that all the practical labours begun to-day will in the end be successful; for it is possible to conceive of both a *Permanent International Organization of States* and the complete *Abolition of the Right of War*.

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